



**Ole Sordo v Republic (Miscellaneous Criminal Application
E020 of 2022) [2023] KEHC 1530 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CRIMINAL APPLICATION E020 OF 2022**

F GIKONYO, J

MARCH 1, 2023

BETWEEN

SONJOI OLE SORDO APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from Original Conviction and Sentence in Narok CMCR No. 18 of 2016, Narok
HCCRA No. 23B of 2017, and Nakuru Misc. Criminal Application No. 59 of 2020)*

JUDGMENT

1. The undated application received in court on June 6, 2022 is seeking sentence rehearing.
2. The application is expressed to be brought pursuant to Articles 2,3(a),19(2),20(1), 22(1) (3), 23(1), 25(c),27(1) (4), 28, 50 (2)(p)(q), and 165 of the Constitution, the Constitution of Kenya (protection of rights and fundamental freedoms), practice and procedure rules 2010, sections 216 and 329 of the CPC, sections 295 and 296(2) of the penal code and section 333(2) of the CPC.
3. The application is premised upon the grounds upon conviction for defilement contrary to section 8(1) (2) of the SOA in criminal case no 18 of 2016 at Narok CM's court, the applicant was sentenced to life imprisonment. His appeal Narok HCCRA No 23B of 2017 appeal was dismissed.
4. In his mitigation, the applicant has cited the case of Francis Karioko Muruatetu and another v Republic Petition No. 15 and 16 of 2015. He also stated that he was first offender. He urged this court to find that he is an old man whose life is greatly affected by imprisonment. Further that he has taken advantage of the rehabilitation programs offered in the correctional facility. That the court should be guided by the provisions of article 50(2) (p) as well as considering the time already spent in prison.



Directions of the court.

5. The application was canvassed by way of written submissions. The applicant filed submissions, but the respondent did not.

Applicant's Submission

6. The applicant submitted that the sentence imposed on him was a statutory mandatory sentence; thus, even his mitigation then could not have changed the sentence since the trial judge's hands were tied by the mandatory provisions. He urged the court to exercise its discretion.
7. The applicant submitted that he should be granted another chance since he was a first offender and is remorseful.
8. The applicant urged this court to take into account the time he has already spent in prison while undergoing trial.
9. The applicant has relied on the following authorities;
 - i. *S Vs Mchunu and Another* (ar24/11) (2012) ZAKZPHC 56
 - ii. *S Vs Toms* 1999(2) SA 802(a) at 806(l)-807(b)
 - iii. *S vs Mofokeng* 1999(1) SACR 502(W1 at 506(d)
 - iv. *S v Jansen* 1999(2) SACR 368 at 373 (g) –(h)
 - v. Kenya [judiciary sentencing policy/guidelines](#)
 - vi. [Dismas Wafula Kilwake V Republic](#) (2018) eKLR
 - vii. [Evans Wanjala Wanyonyi](#), HCCR appeal no. 174 of 2015
 - viii. [Paul Ngei V Republic](#) [2019] eKLR
 - ix. [Dennis Kibaara Vs Republic](#) (2019) eKLR
 - x. [Geoffrey Mutai Vs Republic](#) 2018
 - xi. [Guyo Jarso Guyo vs Republic](#) [2017] eKLR
 - xii. Francis Karioko Muruatetu and Another Petition No. 15 and 16 of 2015.
 - xiii. Section 333(2) of the CPC
 - xiv. [Ahamad Abolfathi Mohhammed](#) in Criminal No. 133 OF 2016.
 - xv. Article 50(2) (p)(q) of the [Constitution](#)
 - xvi. Civil Application No. 11 Of 2016 [Kalpana H Rawal & 2 Others V Judicial Service Commission & 3 Others](#) [2016] eKLR.
 - xvii. [Wilfred Manthi Musyoka V Machakos County Assembly & 4 Others](#) [2018] eKLR
 - xviii. *Liyanage V The Queen* [1967] A.C.
 - xix. *Reyes V The Queen* [2002] 2 AC 235, 258
 - xx. *R(Anderson) V Hom Secretary* [2003] 1 ac 837



Analysis And Determination

10. The applicant has invoked the court's constitutional jurisdiction for sentence rehearing.

Issue

11. The chain of judicial steps taken by the applicant after conviction and sentence for defilement bear the answer to the single issue arising: whether the remedy sought is deserved?

12. His appeal to this court against conviction and sentence was heard and dismissed by Bwonwonga J.

13. Among the issues the Applicant specifically took up in the appeal was the sentence imposed, which he argued was manifestly harsh and excessive in the circumstances. The Learned Judge considered the arguments by the Applicant and rendered himself as follows on the question:

21. In ground 10, the Appellant has faulted the trial court both in law and fact for imposing a manifestly harsh and excessive sentence of life imprisonment. In sentencing, the appellant the trial court took into account that the defilement of the 6 years old minor (sic) was done repeatedly over an extended period by giving her shs. 10/=.

22. Furthermore, the trial court found the appellant to be a dangerous sexual predator. These were aggravating factors. The trial Court failed to take into account that the appellant was a first offender, which was a mitigating factor. According to *Kibigen v R* (1975) EA 250, even where a minimum sentence is prescribed, the appropriate sentence must be assessed in ordinary way and, if it is less than the minimum sentence the minimum sentence must be imposed.

23. I have taken into account that the Appellant was a first offender, which was a mitigating factor and the aggravating factors namely repeatedly defiling a minor aged 6 years over an extended period, and I find that the prescribed minimum of sentence of life imprisonment (sic) was deserved. I find no basis to interfere with the sentence imposed and I therefore dismiss this ground of appeal.

14. Subsequent to the decision in the appeal, the Applicant filed an Application before the High Court seeking for orders of resentencing under the Muruatetu decisional law. The Applicant argues in the application that the mitigation he offered to the Trial Court was not considered and that therefore there should be a new sentencing hearing in line with the decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.

15. Bwonwonga J recused himself from hearing the Application because he had heard the appeal. The Application was, hence, sent to Nakuru High Court for hearing and disposition. The said petition was assigned Nakuru Misc. Criminal Application No. 59 Of 2020. see [Sonjoi Ole Sordo v Republic](#) [2020] eKLR

16. Prof. Ngugi J (as he then was) dismissed the application on the ground that the minimum sentence question had been addressed and determined by the High court (Bwonwonga J).

17. Specifically, Prof. Ngugi J (as he then was) stated in his judgment as follows;

7. I have considered the Application. The Application cannot lie. The points the Applicant wishes to take up on this Application are the same ones he took up on the appeal and a Judge of the High Court made specific findings thereon. He cannot re-litigate the same issue before



this Court. Neither can he seek a review of the findings of the Judge of the High Court in the self-same High Court.

8. As reproduced above, the Learned Judge specifically addressed the question of sentence and whether the minimum sentence was deserved in the circumstances of this case. He ruled that it was. While our decisional law now accepts that in specific circumstances a sentencing court might impose a sentence lower than the minimum sentence prescribed by statute, in this case, the High Court has pronounced itself on the appropriate sentence in the specific circumstances of the case. Consequently, the Applicant cannot approach the High Court again for a review of the sentence. His only recourse is to file an appeal to the Court of Appeal.
9. Consequently, the undated Application/Petition herein is dismissed.
10. Orders accordingly.
18. No doubt the applicant is engaged upon review upon review of the decision of this court- a practice that is akin to asking the court to sit on appeal over its judgment or one that borders abuse of process of the court. Although it was dealing with its Act, the Supreme Court expressed its sentiments that ‘...review upon review is completely alien to the *Supreme Court Act* and the Rules made thereunder’ (*Peter Ngoge vs. Josphine Awino & others* [2021] eKLR and *Menginya Salim Murgani v Kenya Revenue Authority* [2014] eKLR).
19. In the circumstances of this case, the applicant is clearly engaged in abuse of the process of the court. Such application is festering waters; and the court will only risk stretching its arm but to strike down the application. Accordingly, I dismiss the application. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 1ST DAY OF MARCH, 2023

F. GIKONYO M.

JUDGE

In the presence of:

1. Applicant person
2. Ms. Mwaniki for DPP
3. Kasaso – CA

