



REPUBLIC OF KENYA



KENYA LAW
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**Swan v Republic (Criminal Petition E010 of 2022)
[2023] KEHC 3138 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3138 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E010 OF 2022**

**RE ABURILI, J
APRIL 12, 2023**

BETWEEN

GEORGE ODHIAMBO SWAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Criminal Petition by George Odhiambo Swan was filed on June 15, 2022 claiming that the mandatory minimum twenty (20) years imprisonment imposed on him for the offence of defilement was unconstitutional hence it should be reviewed to meet articles 27 (1) and 28 of the Constitution.
2. He claims that he was tried, convicted and sentenced vide Kisumu Chief Magistrate's Court Criminal Case No. 575 of 2011. He appealed to the High Court vide HCRA No. 32 of 2015 which was dismissed.
3. That he has now reformed and trained in life's skills as per the annexed certificates from Mahanaim college, International Youth Fellowship and Prison Project Phillip among others.
4. That he is now God fearing and given a chance, he will tell others of the dangers of crime. He filed detailed written submissions and relied on the decision by Odunga J in Machakos High Court Constitutional Petition No E017 of 2022 to urge this court to render the Mandatory minimum sentence as unconstitutional. That he committed the offence when he was 33 years old by mistake and he cannot repeat the offence.
5. Before I delve in to the merits of the Petition herein, I observe that vide Kisumu HCCR Petition No 72 of 2019, the Convict herein petitioned his court for resentencing and vide judgement rendered on December 16, 2021, the Court dismissed his petition but ordered that the time spent in prison custody pending trial be taken into account in computing the twenty (20) years prison sentence imposed on him pursuant to section 333(2) of the Criminal Procedure Code.



6. Having so found that a similar petition was considered on its merits and dismissed by a court of concurrent competent jurisdiction, I find that this court is now bereft of any further jurisdiction to undo what was done by the court and or sit on appeal of the judgment of my sister judge.
7. I find this petition to be an abuse of court process. It is hereby dismissed.
8. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF APRIL, 2023

R. E. ABURILI

JUDGE_

