



**Mwakilenge v Republic (Miscellaneous Criminal Application
E060 of 2022) [2023] KEHC 4137 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E060 OF 2022**

GMA DULU, J

MAY 10, 2023

BETWEEN

HERMAN KORONGE MWAKILENGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is a Chamber Summons filed on December 20, 2022 by Herman Koronge Mwakilenge for review of the sentence meted in Wundanyi CM Criminal Case No 14 of 2017, wherein he was sentenced to fifteen (15) years imprisonment for defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* No 3 of 2006.
2. He disclosed in the application that he appealed in Mombasa High Court Criminal Appeal No 4 of 2018 but the appeal was dismissed and both conviction and sentence upheld.
3. He deponed in his affidavit in support sworn on September 23, 2022 that he did not appeal to the Court of Appeal.
4. The applicant has relied upon Mombasa High Court Petition No 97 of 2021 *Edwin Wachira & 9 Others v Republic*, consolidated with Petition No 88 of 2021, 98 of 2021 and 57 of 2021 – in which the High Court declared minimum sentences as unconstitutional.
5. The applicant also relied on Section 333(2) of the *Criminal Procedure Code* (cap 75) and the case of *Silas Jonah & 87 Others v The Attorney General* for a request that the period he was in remand custody during trial be deducted from the prison sentence pronounced against him.
6. The applicant also filed written submissions to support his request for review of sentence.



7. In response, the learned Prosecuting Counsel Mr Sirima stated orally that the applicant had earlier on filed an application for review of sentence which was dismissed by Ongijo J Counsel thus stated that this second application for review of the sentence is an abuse of court process.
8. Having perused the record, I find that indeed on January 21, 2021 this court dismissed an application by the applicant for review of sentence in this matter. This court is thus bound by its own substantive decision delivered on January 21, 2021 as it is now functus officio.
9. This court cannot entertain another review application on the same matter. To conclude, I find the present application for review of sentence to be an abuse of the process of the court, and strike it out.

**DATED, SIGNED AND DELIVERED THIS 10TH DAY OF MAY, 2023 IN OPEN COURT AT VOI
IN OPEN COURT.**

GEORGE DULU

JUDGE

In the presence of:

Applicant

Mr. Sirima for state

Mr. Otolu court assistant.

