



**Nyangwara v Republic (Criminal Revision E047 of 2022)
[2023] KEHC 4156 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E047 OF 2022
WA OKWANY, J
MAY 11, 2023**

BETWEEN

PETER NYANGWARA APPLICANT

AND

REPUBLIC RESPONDENT

(Keroka SRM Cr Case No 459 of 2017)

RULING

1. The Applicant herein was charged before the Lower Court in Keroka SRM Cr Case No 459 of 2017 with the offence of Defilement contrary to Section 8 (3) of the *Sexual Offences Act*. He was also charged with the alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*. He pleaded not guilty to the charge and after hearing and considering the evidence presented by both the prosecution and the Applicant, the Lower Court convicted him upon finding that the charge of defilement was proved beyond reasonable doubt.
2. The Applicant appealed against both the conviction and sentence before this court in Nyamira HCCRA No 2A of 2018. The appeal was however dismissed through a judgment delivered by EN Maina J on July 26, 2018.
3. The Applicant has now approached this court through an application filed on December 29, 2022 wherein he seeks a re-sentencing. The Applicant argues that in a decision made in Machakos Petition No E017 of 2022 *Philip Mueke Maingi & Others v Republic* [2022] eKLR the court gave reprieve to those convicted of sexual offences and whose sentences were passed on the basis that the trial court had no discretion where the law imposes a mandatory minimum sentence.
4. At the hearing of the application, the Applicant submitted that he seeks a review of his sentence so that he can continue with his education. He also stated that he is remorseful for the offence.



5. On his part, Mr Chirchir, Learned Counsel for the State, opposed the application and argued that since this court (differently constituted) had already dismissed the appeal, the court became functus officio and cannot entertain an application for review of sentence. It was the Respondent's case that the Applicant could only ventilate his dissatisfaction with findings on the sentence before the Court of Appeal.
6. I have carefully considered the application filed on December 22, 2022 together with the parties' respective submissions.
7. The application is expressed to have brought under Section 198 of the *Criminal Procedure Code* which provides that an accused person be present at his trial, and that any evidence given in a language he does not understand shall be interpreted to him in a language which he understands.
8. The present application does not however seem to be over the language used during the trial or the Applicant's court attendance at the trial. I find that Section 198 of the *Criminal Procedure Code* may have been erroneously invoked by the Applicant.
9. The main issue for determination is whether this court can review the sentence imposed by the trial court and confirmed by this court, on appeal.
10. My finding is that having considered and determined the appeal filed by the Applicant herein, this court became functus officio and cannot purport to reconsider the issue of the sentence imposed on the Applicant. I agree with the submissions by Counsel for the State that the Applicant should challenge the decision on sentence before the Court of Appeal.
11. For the above reasons, I find that this court lacks the jurisdiction to entertain the application filed on December 22, 2022. The application is not merited and I therefore strike it out for being improperly before this court.
12. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA ON THIS 11TH DAY OF MAY 2023.

W. A. OKWANY

JUDGE

