



REPUBLIC OF KENYA



**Mwanyesa v Republic (Miscellaneous Application E056 of 2022)  
[2023] KEHC 19201 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19201 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E056 OF 2022**

**GMA DULU, J**

**JUNE 22, 2023**

**BETWEEN**

**ALEXANDER MWANAIGHA MWANYESA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is an application filed by the applicant herein Alexander Mwanaigha Mwanyses on December 20, 2022 in which the applicant seeks the following orders;-
  1. That this court be pleased to review the sentence and grant him lenient sentence informed by the mitigation and unique facts and circumstances of his case pursuant to Article 50(2)(p)(q) of the *Constitution*.
  2. That the period spent in remand custody of six months be computed into the eventual sentence to be awarded pursuant to the provisions of Section 333(2) of the *Criminal Procedure Code* and also pursuant to *Vincent Sila Jona & 87 Others Versus the Attorney General*.
  3. That this court be pleased to grant him probationary orders if his circumstances so fit.
  4. Any other order that the court deems fit to give in the interests of justice.
2. The application has grounds on its face, that the applicant was sentenced to twenty (20) years imprisonment in Voi Chief Magistrate Criminal Case No 686 of 2013 for defilement, that he appealed in Voi High Court Criminal Appeal 145 of 2014 wherein his appeal was dismissed, that his sentence was based on the statutory minimum sentence under Section 8(3) of the *Sexual Offences Act*, and that in Petition No 97 of 2021 *Edwin Wachira & 9 Others Versus Republic* Mombasa – the High Court; it was declared that minimum sentences was unconstitutional.



3. The application was filed with a supporting affidavit sworn on November 1, 2022 by the applicant Alexander Mwanaigha Mwanyesa which amplifies the grounds of the application.
4. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the applicant as well as the submissions filed by the Director of Public Prosecutions.
5. The applicant contends that this court has jurisdiction to entertain this application, while the Director of Public Prosecutions states that this court has no jurisdiction to entertain this application, as the only avenue presently available to the applicant is to appeal to the Court of Appeal, which he has elected not to do.
6. I note that the applicant has relied on Article 165 of the Constitution to support his contention that this court has jurisdiction to hear this application on alleged violation of his constitutional rights. In this regard I will hereto take into account the relevant part of Article 165 of the Constitution, which provide as follows:-

165 (3) Subject to clause (5), the High Court shall have

  - a. Unlimited original jurisdiction in criminal and civil matters;
  - b. Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.
  - c. ....
  - d. Jurisdiction to hear any question respecting the interpretation of this constitution including the determination of:-
    - i. The question whether any law is inconsistent with the Constitution.
    - ii. The question whether anything said to be done under the authority of this Constitution or any law is inconsistent with, or contravention of this Constitution.
    - iii. Any matter relating to Constitutional powers of State a agency in respect of a county government and any matter relating to the constitutional relationship between the levels of government.
    - iv. A question relating to a conflict of laws under Article 191; and
    - v. Any other jurisdiction original as appellate, conferred on it by legislation.
7. I also take into account that in this same matter, the applicant has already been sentenced by the subordinate court and which sentence was later upheld the High Court on appeal. He again came to this same High Court at Voi in Criminal Review E018 of 2021 and a decision was made by the Judge on September 22, 2021, which this applicant has failed to disclose either in the application or in submissions.
8. In my view, this court has no jurisdiction to entertain this application for review of sentence and it is for striking out. The first reason is that if this was a constitutional matter, the applicant should have come to this court through a constitutional petition and not through this application, which is neither described as a Notice of Motion nor a Chamber Summons the way he did. On that account alone, there cannot be a valid constitutional cause herein to be considered by this court.



9. The more important reason however, is that the applicant has not demonstrated to this court anything that would call into play the constitutional jurisdiction of this court.
10. His complaint regarding the sentence imposed on him herein, is clearly not a violation of the Constitution, as he has not pleaded any facts that would demonstrate that the trial court or High Court in dealing with this matter violated the Constitution.
11. Thirdly, the applicant after determination of his appeal in the High Court, has already come to this court for review of sentence previously in Voi High Court Misc Criminal Application E018 of 2021 which has already been determined, and has failed to disclose that fact to this court. Thus he cannot be said to be acting in good faith, and is merely misusing this court by trying to obtain conflicting orders from this same court, which cannot be entertained. Litigation has to come to an end, and courts should not be misused the way the applicant is trying to do.
12. I find that this second application for revision of sentence before this same court is misadvised and incompetent an abuse of the court process and that this court has no jurisdiction to entertain the same. I strike out the application.

**DATED, SIGNED AND DELIVERED THIS 22<sup>ND</sup> DAY OF JUNE 2023 AT VOI IN OPEN COURT.**

**GEORGE DULU**

**JUDGE**

In the presence of:

Applicant

Mr. Sirima for State

Mr. Otolu court assistant

