



REPUBLIC OF KENYA



**Soi v Republic (Miscellaneous Criminal Application E052 of 2022)
[2023] KEHC 18701 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18701 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E052 OF 2022**

HK CHEMITEI, J

JUNE 21, 2023

BETWEEN

KENNEDY KIPNGETICH SOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted and subsequently sentenced to life imprisonment for the offence of defilement by the Chief Magistrate Court in Molo. Being aggrieved by the said decision, the applicant appealed to the High Court which convicted and sentenced him to 30 years' imprisonment for the alternative charge of Committing an Indecent Act with a child contrary to section 11(1) of the *Sexual Offences Act*. Thereafter, the applicant filed an appeal to the Court of Appeal which he later withdrew.
2. The application before this court seeks for re-sentencing of the 30 years' imprisonment currently being served by the applicant issued by Justice Wendoh on a judgment dated July 18, 2014. The applicant in his application listed several mitigating factors, the same include; that this court has discretion on sentencing following the decision in Philip Mueke Maingi petition no. 16 of 2021 at Machakos, that he is a first offender, that he is a young man and that has taken full advantage of rehabilitation programmes offered in the correctional facility.
3. In his submission, he pleaded for leniency by this court following the provisions of article 50(2) (p) and (q) of the *Constitution*. He also placed reliance on the cases of *S v Mahunu and another* (AR 24/11(2012) Zakzphc 56 KWA, *Dismas Wafula Kilweke v Republic* [2018] eKLR, *Evans Wanjala Wanyonyi* HCCR App. 174 of 2015, Criminal Appeal No. 312 of 2018 and *Philip Mueke and 5 others* Petition No. E017 and 16 of 2021. He urged this court to find that the sentence of 30 years was a harsh sentence under section 11(1) of *Sexual Offences Act* and offer him more lenient sentence as he was also remorseful.



4. The learned state counsel opposed the application vide a replying affidavit dated February 6, 2023 and filed in court on same date. He averred that this court is *functus officio* as it could not further review a sentence given by a similar court and the applicant can only appeal to the Court of Appeal. Further, that this court should not interfere with the sentence as the application lacks merit.
5. The court has perused the record and clearly it is apparent that the applicant defiled the complainant who was a minor. The import of punishment as provided in our statute books is to try as much as possible ameliorate the suffering of the victims. Also, it is meant to somehow compensate the victim or family of the victim by having the perpetrator punished. The offence the applicant was charged with is a serious one and the sentence acts as a deterrent to persons who would want to commit such offences.
6. In the instant case, the applicant has already benefited from that decision when his sentence was reduced to 30 years' imprisonment from life imprisonment.
7. It is evident that at this court found him guilty of the alternative charge and the issue of resentencing in my view was not considered. The reduction of the sentence from life imprisonment was done by the trial court suo moto and the applicant was not granted an opportunity to mitigate or submit over the sentence.
8. It is therefore not true that this court is *functus officio*. Taking into consideration the mitigating factors raised by the applicant the sentence of 30 years is therefore reduced to 15 years from July 31, 2013.
9. Orders accordingly.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 21ST DAY OF JUNE, 2023.

H. K. CHEMITEI

JUDGE

