



**Vurache v Republic (Criminal Appeal E005 of 2024)
[2024] KEHC 13729 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL APPEAL E005 OF 2024
RPV WENDOH, J
OCTOBER 25, 2024**

BETWEEN

TIMOTHY VURACHE APPELLANT

AND

REPUBLIC RESPONDENT

(From Original Conviction and Sentence in Criminal Case No. 473 of 2015 in the PM's Court)

JUDGMENT

1. This is an appeal by Timothy Vurache (appellant) who was convicted for the offence of defilement contrary to section 8(1) as read with section 8 (3) of the Sexual Offence Act.
 2. The particulars of the charge were that between diverse dates from the month of August 2014 to 6/2/2015, within Trans Nzoia County, caused his penis to penetrate the vagina of EM a girl aged thirteen (13) years.
 3. In the alternative, he faced a charge of committing an indecent act with a child contrary to section 11(1) of the Sexual Offence Act. He was alleged to have touched the buttocks and breasts of EM a child aged thirteen (13) years. He was convicted on the main charge and no finding was made on the alternative charge.
 4. The appellant was sentenced to serve twenty (20) years imprisonment. He is aggrieved by both the conviction and sentence which provoked this appeal
1. The grounds of appeal are as follows; -
1. That the trial magistrate did not observe the provisions of Article 50 of *the constitution*.
 2. That the trial court erred by not considering the Supreme court decision that mandatory sentences deprive courts of discretion.



3. That the court failed to consider that he had already served nine (9) years imprisonment;
4. That the trial court failed to consider the High Courts order on resentencing.
5. The appellant therefore prays that the appeal be allowed, sentence be reduced.
6. The appellant filed written submissions in support of the appeal. From the submissions they are all mitigating factors, as he seeks reduction of his sentence. The appellant claims to be remorseful, has learnt his lessons; that he has undergone several trainings which he has displayed certificates; that the court should consider that sentences should help in rehabilitation of an Offender and he is fully rehabilitated, hence the court should consider the mitigating factors.
7. The prosecution Counsel Mr. Majale made oral submissions in response and stated that the appellant approached this court with an application of Revision of his sentence which was canvassed on 5/3/2024 and was resented by the Chief Magistrate; that he has come back to the court with another application for review of sentence. He submits that the same is misplaced for want of jurisdiction this court having ordered a resentence; that if still feels aggrieved the appellant should proceed to the Court of Appeal.
8. I have considered the rival submissions.
9. This being a court of record, this court will consider the court record. Vide CRA.26/2015, the appellant moved this court on appeal. Justice Githinji heard his appeal and dismissed the appeal on 22/9/2016. After that, the appellant filed Misc. Appl. 9/2017 seeking revision of his sentence and on 17/3/2021 Judge Bwonwong'a dismissed it for lack of jurisdiction.
10. Again in Misc. App.E006/2022 the applicant sought revision of his sentence and Judge Mrima directed that the appellant be resented by the Chief Magistrate which the Chief Magistrate did.
11. On 31/02/2023 the appellant not losing faith again filed Cri.App. E002/2023 which Judge Mrima dismissed on 4/5/2023, not deterred he again filed Cri.Misc.Appl. E006/2023 which Judge dismissed on 28/12/2023, Undeterred the appellant then filed this appeal seeking reduction of his sentence.
12. From the history set out above, it is obvious that the appellant has abused the process of this court over and over again. Once Justice Githinji dealt with his appeal this court became functus officio to hear any other appeal by him. As for Miscellaneous application, once Justice Bwonwong'a dismissed the first application for lack of jurisdiction, this court lacked any more jurisdiction to deal.
13. As advised by the prosecution Counsel, if he still feels aggrieved, the appellant's only recourse is to approach the Court of Appeal. Otherwise, this court lacks the jurisdiction to entertain this matter. The Appellant is warned not to persist in abusing the court process. The appeal is hereby dismissed.

DELIVERED, DATED AND SIGNED AT KITALE THIS 25TH DAY OF OCTOBER 2024.

R. WENDOH

JUDGE

Judgement delivered virtually in the presence of

Mr. Majale for the State.-

Accused- Present

Juma/ Hellen– Court Assistants

