



**Edavile v Republic (Criminal Petition 25 of 2020)
[2024] KEHC 14500 (KLR) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION 25 OF 2020
SC CHIRCHIR, J
NOVEMBER 19, 2024**

IN THE MATTER OF SECTION 354 AND 364 CRIMINAL PROCEDURE CODE L.O.K

AND

IN THE MATTER OF SECTION 26 (2) PENALCODE CAP 63

AND

IN THE MATTER OF ARTICLE 50(2) (Q), 50(1), 22(A), 23(3) (A-F), 50(2)(P), 50(6)(A)(B),19(2)

BETWEEN

MOSES MUSAHA EDAVILE PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner herein filed this Application seeking for a review of sentence , with a view of being given a more lenient sentence. His petition is premised on Articles 50 (2) (p) (q) 50(1), 22(a),23(3) (a-f), 50(2)(p), 50(6)(a)(b) and 19(2)of *the constitution* of Kenya.
2. It is the petitioner’s case that the sentence of 25 years meted out to him by this court (Musyoka J) is excessive given that he is 69 years against the life expectancy of 70 years.
3. He further states that the 25 year sentence is as good as death sentence because he does not see himself serving the said term due to ill- health. The sentence , he submits , would not have served its purpose therefore. He further submits that that he is a sole bread- winner for his family as his wife is sickly and unemployed.
4. He further submits that he is no longer a danger to the community and he should be re-integrated to it. He adds that he is remorseful and asks for mercy.



5. He argues that this court can review its decisions and relies on the case of R vs. Diana Suleiman and another 2014 eKLR in this regard.
6. He has anchored his plea for review on the Supreme Court decision in the case of Francis Karioko Muruatetu & Another vs. Republic (2017) eKLR.

The Respondent's case

7. It is the Respondent's case that the petitioner has not raised any legal grounds to warrant the review of the sentence; that the age of the petitioner is not a valid ground to interfere with the sentence.

Analysis and determination

8. The petitioner was charged and convicted for the offence of defilement contrary to section 8(1) as read with section 8 (2) of the sexual offence *Act No 3 of 2006*, at the lower court, and sentenced to life imprisonment. He appealed against the sentence to this court under Criminal Appeal No 182 of 2018. In a judgment delivered on 24th January 2020 Justice M.W Musyoka reduced the sentence to 25 years.
9. It is against this sentence that the petitioner seeks for a review.
10. Although the petitioner has cited several Articles of *the constitution*, he has not demonstrated which of his rights have been violated. Merely citing the provisions of *the constitution* without telling the court which violation the court needs to adjudicate on is really futile.
11. However I note that the petitioner has relied on sections 354 to 364 of the Criminal procedure code. These provisions of the criminal procedure code bestow upon the high court the jurisdiction to review or revise the proceedings or order or sentences of the lower court only. It has got no powers to revise the orders or sentence passed by a court of concurrent jurisdiction or higher courts.
12. If the petitioner was dissatisfied with the sentence of 25 years, he ought to have moved to the court of Appeal, but not to come to this court riding on the provisions of section 354 to 364 of the criminal procedure code.
13. I have considered the findings of the high court in the case of Rvs Diana Suleiman (supra), cited by the petitioner. In that case the court was considering the subject of bail. The gist of the ruling on that matter was that the court has jurisdiction to review its orders where the circumstances of an accused person who had earlier been denied bail have changed. Thus new matters may be brought to the attention of the court and the court may review an order on bail based on the new circumstances. There are no new circumstances that have been presented in this case, and in any event, in my view, such review are only limited to issues of bail.
14. In conclusion, the petition is not merited. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF NOVEMBER 2024.

S. Chirchir

Judge.

In the presence of :

Godwin- Court Assistant.

The petitioner.

