



**Ngatia v Republic (Miscellaneous Criminal Application E169 of 2023)
[2024] KEHC 14082 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E169 OF 2023**

**JM NANG'EA, J
NOVEMBER 14, 2024**

BETWEEN

SOLOMON NGATIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By this undated application filed on 14th December, 2023 the applicant prays for a lenient sentence, that gives credit for the period he has been in prison during which he says he has been rehabilitated. By affidavit in support of the application, the applicant avers that he was convicted in Nakuru Law Courts' Criminal Case No 230 of 2013 of the offence of Defilement Contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* No 3 of 2006 and sentenced to thirty (30) years imprisonment. His appeal to this court vide Criminal Appeal No 213 of 2015 was dismissed. The applicant further states that he did prefer a second appeal to the Court of Appeal which appeal was also dismissed.
2. In support of this application the convict cites inter alia Mombasa High Court Constitutional Petition No E097 of 2021 (Consolidated) v Director of Public Prosecutions (DPP) in which it was observed that the court's discretion in sentencing should not be fettered by mandatory minimum sentences prescribed under the *Sexual Offences Act* which were declared unconstitutional.
3. The prosecution Counsel (Ms Sang) opposes the application submitting that the applicant's constitutional rights have not been violated by the sentence imposed. Ms Sang further referred to the judicial determination in Petition No E018 of 2023 (*Republic v Joshua Gichuki Mwangi*) in which the Supreme Court of Kenya held that the mandatory minimum sentences prescribed under the *Sexual Offences Act* are lawful and/or Constitutional and therefore courts have no jurisdiction to impose lesser sentences. The apex court directed that a litigant challenging such minimum sentences should originate a Petition in the High Court and if necessary, escalate it to the Court of Appeal and the Supreme Court for a final determination.



4. The applicant replied that it is on the Court of Appeal that cannot resentence as per the case of *Joshua Gichuki Mwangi supra*.
5. The central point for determination in this application is whether the court has jurisdiction to resentence the applicant as desired. He had been sentenced to 30 years imprisonment pursuant to Section 8(3) of the *Sexual Offences Act* No 3 of 2006 which prescribes such mandatory sentence for the offence charged.
6. As per Ms Sang's submissions, the Supreme Court has settled the law on minimum sentences under the *Sexual Offences Act* in the said case of *Joshua Gichuki Mwangi supra* and therefore the decision in the cases relied upon by the applicant is no longer good law. Neither this court nor the trial court therefore has jurisdiction to resentence the applicant as prayed. Besides, other appellate courts dismissed the applicant's appeal against both conviction and sentence on the charge in question and therefore I have no jurisdiction to revisit the decisions.
7. The upshot is that the court has no jurisdiction to interfere with the sentence imposed.
8. The application is accordingly dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 14TH DAY OF NOVEMBER, 2024 IN THE PRESENCE OF:

The state,

The Applicant,

J. M. NANG'EA, JUDGE.

