



REPUBLIC OF KENYA



**Ndumia v Republic (Criminal Revision E009 of 2024)
[2024] KEHC 15542 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E009 OF 2024
MA ODERO, J
DECEMBER 6, 2024**

BETWEEN

CHARLES GITONGA NDUMIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Charles Gitonga Ndumia seeks review of his sentence. The office of the Director of Public Prosecutions (ODPP) opposes the application.
2. The Applicant was charged in CMCC No. 052 of 2021 with the offence of Committing An Indecent Act With a Child contrary to Section 11(1) of the *Sexual Offences Act*, 2006.
3. Following a trial in the lower court the Applicant was convicted. On 13th December 2022 the Applicant was sentenced to serve ten (10) years imprisonment. The Applicant has now filed an application seeking review of this sentence.
4. The power of the High Court to review sentences is provided by Section 362 of the *Penal Code* Cap 63, Laws of Kenya which provides as follows:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness legality, or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings in any such subordinate court.”
5. The orders which the court may make upon revision are provided for by Section 364 of the *Penal Code*.



6. Section 11(1) of the *Sexual Offences Act*, 2006 provides as follows:-

“Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years” [own emphasis]

7. The Applicant was subjected to a trial at which witnesses were called and he was allowed the opportunity to cross-examine the said witnesses. I find no procedural error in the way the trial was conducted.
8. Upon conviction the Applicant was granted an opportunity to offer mitigation after which the sentence was imposed.
9. I have perused the proceedings as well as submissions filed by the Applicant. In it he seeks forgiveness and states that he has reformed whilst in prison. The Applicant has relied on the *Muruatetu case*. However in the case of *Joshua Gichuki Mwangi & Others* Petition No. 018 of 2023 the Supreme Court of Kenya upheld as constitutional the mandatory minimum sentences provided for by the *Sexual Offences Act*. Section 11(1) under which the Applicant was convicted provided for a mandatory minimum sentence of ten (10) years upon commission of an offence under this section.
10. Under the doctrine of “Stare desis’ the decision of the Supreme Court in the *Joshua Mwangi case* is binding on this court. As such the minimum sentence imposed upon the Applicant was lawful and this court cannot interfere with the same.
11. Finally I find no merit in this application for review of sentence. The same is dismissed in its entirety and the sentence imposed by the trial magistrate is hereby confirmed.

DATED IN NYERI THIS 6TH DAY OF DECEMBER 2024.

MAUREEN A. ODERO

JUDGE

