



**Ndaya v Republic (Miscellaneous Criminal Application E167 of 2023)
[2024] KEHC 15236 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E167 OF 2023**

**JM NANG'EA, J
DECEMBER 3, 2024**

BETWEEN

SABASTIAN MACHARIA NDAYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted of Defilement Contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* No. 3 of 2006 vide Sexual Offence Case No. 86 of 2018 before the Chief Magistrate's Court at Molo and sentenced to 15 years imprisonment to commence from 23rd July 2018 when he was first arraigned in court.. This application is now brought seeking resentencing in light of subsequent decisions of superior courts allowing for exercise of discretion in senetencing instead being strictly bound by certain provisions of the *Sexual Offences Act* that prescribe mandatory minimum sentences. The applicant, for instance , cites this court's decision in Constitutional Petition No. E017 of 2021 (*Philip Mueke Maingi & Others V. Republic*).
2. The Prosecution Counsel (Ms Sang) replied submitting that this court has no jurisdiction to resentence the applicant by dint of the decision of the Supreme Court in Consitutional Petition No. E018 of 2023 (Republic V. Joshua Gichuki Mwangi & Others) which validated minimum mandatory sentences in the *Sexual Offences Act* .
3. I have perused the application, the applicant's submissions and the Prosecution Counsel's submissions in reply. The judicial determinations in Daniel Otieno Oracha V. Republic (2019) eKLR and John Kagunda Kariuki V. Republic (2019) eKLR underscored the important principle of stares decisis which requires that lower courts must defer to decisions of superior courts in similar matters.
4. Clearly, this court has no jurisdiction given the Supreme Courts' pronouncement in the case adverted to above.



5. Accordingly, I concur with the prosecution that I have no jurisdiction to make further orders on the applicant's sentencing. This application is therefore dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 3RD DAY OF DECEMBER 2024 IN THE PRESENCE OF:

The state, Ms Sang

The Applicant, present

The Court Assistant, Lepikas

J. M. NANG'EA, JUDGE.

