



**Waruguru v Republic (Miscellaneous Criminal Application  
E044 of 2023) [2024] KEHC 15460 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15460 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
MISCELLANEOUS CRIMINAL APPLICATION E044 OF 2023  
AK NDUNG’U, J  
DECEMBER 6, 2024**

**BETWEEN**

**JOSEPH GITHAGI WARUGURU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. In his undated notice of motion application filed on 01/11/2023, the Applicant herein, Joseph Githagi Waruguru, has asked this court to invoke its powers to review the sentence downward for the sake of interest of justice and grant any other orders the court may deem fit. The application is supported by an affidavit where he averred that he was charged with the offence of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act vide Criminal Case No. 05 of 2016 and he was convicted and sentenced to life imprisonment. He appealed to this court and his appeal was dismissed on 14/02/2018 and the sentence affirmed and there is no other pending appeal.
2. He averred that he has found interest in the matter following the court of appeal ruling and judgments in Joshua Gichuki Mwangi vs Rep Cr. App No. 84 of 2015 (2022) eKLR; Philip Mueke Maingi & others in Const. Petition No. E017 of 2021 and Edwin Wachira & others vs DPP in Constitution Pet. No 97 of 2021 among other cases on the mandatory minimum and maximum sentences under the *Sexual Offences Act*. He urged this court to exercise its powers and apply section 4(2) of Probation of Offenders Act considering his mitigation and rehabilitation records. That he has rehabilitated and he is remorseful for his action.
3. The application is opposed. Counsel for the respondent raised a preliminary objection dated 09/11/2023 on account that the application is incompetent since it is unsupported in law, the court lacks jurisdiction to hear and determine the application and that the same is an abuse of the court process.



4. The application was argued orally. The Respondent counsel maintained that the court lacks jurisdiction to review a sentence affirmed by a court of concurrent jurisdiction. The Applicant argued that courts have decided that life imprisonment should be for a definite time. The Respondent argued that those orders should not apply retrospectively.
5. I have considered the rival arguments by the parties. The Applicant seek for review of his life imprisonment sentence guided by the cases he relied on in his supporting affidavit. He informed this court that he had appealed to this court and his appeal was dismissed and the sentence was affirmed. He stated that there is no other pending appeal. He did not however inform this court whether he appealed to the court of appeal or not.
6. The power of criminal review of the High Court is provided for in sections 362 and 364 of the Criminal Procedure Code, and extends only to –

“...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 the proceedings.”
7. This court simply does not have power to review its own findings, sentences or orders made or passed in exercise of its original criminal jurisdiction unless a matter is referred for re-sentencing according to the directions in the Muruatetu case.
8. In any event, the finding of the Supreme court in *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024) (Judgment) is relevant. Considering the application of mandatory minimum sentences in sexual offences, the court stated;

“Our findings hereinabove effectively lead us to the conclusion that the judgment of the Court of Appeal delivered on 7<sup>th</sup> October, 2022 is one for setting aside. In any case, the sentence imposed by the trial court against the Respondent and affirmed by the first appellate court was lawful and remains lawful as long as Section 8 of the *Sexual Offences Act* remains valid. We reiterate that the Court of Appeal had no jurisdiction to interfere with that sentence”.
9. In the result the objection raised by the Respondent is upheld. The application before court is dismissed.

**DATED SIGNED AND DELIVERED THIS 6<sup>TH</sup> DAY OF DECEMBER 2024**

**A.K. NDUNG’U**

**JUDGE**

