

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC. MISC. CR. APPLICATION NO. 53 OF 2020

MUINDE KITHYAKA..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before me is an application by way of Chamber Summons filed on 23rd July 2020, the main prayer being a request for review of sentence as follows –

“The court be pleased to consider substituting the sentence imposed under section 8(1) (2) of the Sexual Offences Act No. 3 of 2006 in line with the Court of Appeal decision in Evans Wanjala Wanyonyi –vs- Rep [2019] eKLR , Court of Appeal No. 312 of 2018 Eldoret; Christopher Ochieng –vs- Rep (2018) eKLR Kisumu; and Criminal Appeal No. 202 of 2011 Christopher Ochieng –vs- Rep (2018) eKLR Kisumu and Criminal Appeal No. 202 of 2011”.

2. The application is opposed through a replying affidavit sworn on 19th February 2021 by Ann Penny M. Gakumu Senior Principal Prosecuting Counsel who deponed that the Judges of the Supreme Court and Court of Appeal did not outlaw mandatory sentences and that the sentence imposed on the applicant by the trial court was upheld by the High Court in Makueni Criminal Appeal No. 137 of 2017, and that if dissatisfied with the sentence imposed, the applicant should have appealed to the Court of Appeal and not come to this court seeking review of sentence.

3. At the hearing of the application, the applicant relied on documents filed and stated that though he had filed an appeal to the Court of Appeal, he was not given an appeal file number and thus he filed the present application. Ms. Gakumu for the Director of Public Prosecutions on the other hand, relied on the replying affidavit filed.

4. I have considered the application and the affidavit of the Director of Public Prosecutions. The applicant was convicted of defilement of a girl of 10 years and sentenced to life imprisonment, which was the minimum statutory sentence.

5. Though I have not been availed the trial court record, from the judgment of the High Court, it is clear that the victim was retrieved from the appellant’s house in the morning stuffed in a sack and the appellant was heard by three witnesses asking the victim to come out of his house that early morning.

6. In those circumstances, even though from the reasoning of the Supreme Court and the Court of Appeal, this court could review the sentence, I am of the view that this is not a suitable case for this court to exercise its discretion to review the life sentence imposed, as the appellant was quite insensitive in the way he treated the victim.

7. Consequently, I decline to review the sentence imposed, and instead advise the applicant to consider pursuing an appeal out of time to the Court of Appeal. The application is thus hereby dismissed.

Dated, delivered and signed this 22nd day of July 2021 in open court at Makueni

.....

GEORGE DULU

JUDGE