



**Kamene v Republic (Criminal Miscellaneous Application
E011 of 2022) [2025] KEHC 14500 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL MISCELLANEOUS APPLICATION E011 OF 2022**

**RC RUTTO, J
OCTOBER 14, 2025**

BETWEEN

DAVID KIOKO KAMENE ACCUSED

AND

REPUBLIC PROSECUTION

RULING

1. The applicant has moved this court by way of a petition, seeking a declaration that his constitutional rights were violated. He contends that the trial court failed to consider the provisions of Sections 216, 329, and 323 of the Criminal Procedure Code, as well as the Judiciary Sentencing Policy Guidelines, when passing sentence.
2. He argues that he is entitled to a sentence review based on the decision and Order No. 2 issued by the High Court at Machakos in Petition No. E017 of 2021 — Philip Mueke Maingi & Others — which addressed the constitutionality of minimum mandatory sentencing in sexual offence cases. The applicant maintains that *the Constitution* does not envisage mandatory minimum sentences for such offences, and that courts must retain discretion in sentencing.
3. The background to this case is that the applicant was charged with the offence of defilement under Section 8(1), as read together with Section 8(3), of the *Sexual Offences Act*. Following a full hearing, he was convicted and sentenced to twenty (20) years' imprisonments. He asserts that the sentence was imposed as a mandatory minimum, and that the trial court did not exercise its discretion in determining an appropriate sentence based on the circumstances.
4. Dissatisfied with the sentence, the applicant filed Criminal Appeal No. 184 of 2014, which was dismissed in 2018. He states that he has now served over ten years in prison, during which time he has undergone rehabilitation through life skills training, spiritual development, and various educational



- programs. He is currently serving as a paralegal and seeks an opportunity to reintegrate into society. He further emphasizes that he was a first-time offender and believes he deserves a second chance.
5. The respondent opposed the application for resentencing, arguing that this court lacks jurisdiction to review the decision of a court of concurrent jurisdiction. The respondent relied on the Supreme Court decision in Republic v Joshua Gichuki Mwangi Petition No. E018 of 2023 and submitted that the principles established in the Muruatetu case do not apply to offences under the *Sexual Offences Act*, such as the one for which the applicant was convicted.
 6. This court observes that the applicant's was determined by a court of concurrent jurisdiction when the conviction and sentence were upheld by the High Court while exercising its appellate jurisdiction. In the case of Daniel Otieno Oracha v Republic [2019] KEHC 6242 (KLR) the court in a similar situation held as follows;
 - “13. This court and the High Court at Kisumu are courts of concurrent jurisdiction. That being the case, this court is devoid of any jurisdiction in the exercise of its judicial authority under Article 159 of *the Constitution*, to review a judgment of a court of concurrent jurisdiction. To do so would be tantamount to sitting as an Appellate court on the judgment of my sister Judge Hon. Abida Ali - Aroni, J.
 14. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.
 15. This court's jurisdiction is derived from various statutes and Article 165 of *the Constitution*. In Samuel Kamau Macharia & Another v KCB & 2 Others App. No. 2/2011, the Supreme Court of Kenya made it clear that a court cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that a court cannot expand its jurisdiction through judicial craft.
 16. The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.”
 7. Accordingly, this Court lacks the jurisdiction to review a matter already adjudicated by a court of concurrent jurisdiction.
 8. With regard to the argument that the minimum mandatory sentence are unconstitutional I wish to draw guidance from the Supreme Court decision in the case of 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) in which the Supreme Court has affirmed the constitutionality of the minimum mandatory sentences holding that it is only the legislature that can legislate to remove mandatory sentences provided in Statute.
 9. The upshot of the above is that the application lacks merit and is dismissed in its entirety.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 14TH DAY OF OCTOBER, 2025



RHODA RUTTO

JUDGE

In the presence;

.....Accused

.....ODPP

Selina Court Assistant

