



**Inzauli v Republic (Criminal Miscellaneous Application E103 of 2024)
[2025] KEHC 15570 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E103 OF 2024
JN KAMAU, J
OCTOBER 27, 2025**

BETWEEN

CHRISPINUS INZAULI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* Cap 63A (Laws of Kenya). He was also charged with an alternative charge of the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. He was convicted of the main charge and sentenced to ten (10) years imprisonment.
2. On 11th November 2024, he filed Notice of Motion application dated 30th October 2024 seeking a review of his sentence. He sought a non-custodial sentence-probation service for his remaining term of sentence. He was categorical that he qualified for the same.
3. His undated Written Submissions were filed on 11th November 2024 while those of the Respondent were dated and filed on 17th March 2025. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.

Legal Analysis

4. The Applicant submitted that he was reformed and rehabilitated and was ready to be integrated back into the society and help in nation building. He added that his health was not good as he suffered from asthma.



5. He pointed out that he had a young family that needed his attention since his wife was physically disabled. He argued that just as other prisoners had benefited from the law under the Probation Act, he should be considered without any discrimination and/or prejudice.
6. On its part, the Respondent argued that the Applicant was enjoying a far too lenient sentence and it was, therefore, mischievous to ask for a non-custodial sentence. It invoked Article 165 of the Constitution of Kenya, 2010 and Section 362 and 364 of the Criminal Procedure Code and submitted that the moment the High Court delivered its Judgment in HCCRA No E038 of 2023 (sic), it became functus officio over this matter.
7. It further asserted that the court which ought to deal with an issue arising out of this matter was the Court of Appeal as it was vested with the said jurisdiction under Article 164(3) of the Constitution of Kenya and Section 379(1) of the Criminal Procedure Code. It was emphatic that this court had no jurisdiction to sit on its review or appeal and further, that the Applicant had not demonstrated that there was new and compelling evidence that had become available to entertain the issue of review of sentence.
8. It further invoked Article 50(2)(q) of the Constitution of Kenya and argued that he had not exhausted all avenues since he could approach the Court of Appeal.
9. This court checked the Kenya Law Reports and noted that it was the decision in Inzauli vs Republic (Miscellaneous Criminal Application E038 of 2023) [2024] KEHC 9598 (KLR) (31 July 2024) (Ruling) that the Respondent was referring to HCCRA No E038 of 2023 (sic) where this court reviewed the Applicant's sentence pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya). It did appear to this court that the Applicant had not lodged any appeal before this court as far as his conviction and sentencing was concerned.
10. The above notwithstanding, the Applicant was sentenced under Section 8(1) as read with Section 8 (4) of the Sexual Offences Act Cap 63A (Laws of Kenya). The said Section 8(4) of the Sexual Offences Act provides as follows:- "A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years."
11. This court noted that the Trial Court sentenced the Applicant to ten (10) years imprisonment instead of the fifteen (15) years mandatory minimum sentence. This court could, however, not fault the Trial Court for having sentenced him to a lesser sentence than was prescribed in the Sexual Offences Act as the jurisprudence at the time he was sentenced allowed courts to exercise discretion during sentencing.
12. In the case of Joshua Gichuki Mwangi vs Republic [2022] eKLR, the Court of Appeal reiterated the reasoning in the case of Dismas Wafula Kilwake vs Republic [2018] eKLR where it held that Section 8 of the Sexual Offences Act had to be interpreted so as not to take away the discretion of the court in sentencing offences and held that it was impermissible for the legislature to take away the discretion of courts and to compel them to mete out sentences that were disproportionate to what would otherwise be an appropriate sentence.
13. However, in a decision that was delivered on 12th July 2024, the Supreme Court overturned the decision of the Court of Appeal in the case Joshua Gichuki Mwangi vs Republic (Supra) and stated that the Court of Appeal had no jurisdiction to exercise discretion on sentences that had a mandatory minimum sentence.



14. As this court was bound by the decisions of courts superior to it, its hands were tied regarding exercising its discretion to reduce the Applicant's sentence. It had no option but to leave the said sentence that was meted against the Applicant herein undisturbed.
15. This court was not persuaded to enhance the sentence that was meted to the Applicant herein to fifteen (15) years as the Respondent did not put him on notice that it would be seeking an enhancement of the sentence which would have allowed him to make an informed decision as to whether he would have wished to proceed with his application or if he would have wished to abandon the same. Enhancing his sentence without giving him an opportunity to respond would be contrary to the principles of fair trial provided in Article 50 of the Constitution of Kenya.

Disposition

1. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 30th October 2024 and filed on 11th November 2024 was not merited and the same be and is hereby dismissed.
2. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 27TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

