



**Nduvi v Republic (Criminal Miscellaneous Application E067 of 2024)
[2025] KEHC 15375 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL MISCELLANEOUS APPLICATION E067 OF 2024
TM MATHEKA, J
OCTOBER 15, 2025**

BETWEEN

PETER KIMONDIO NDUVI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed Notice of Motion dated 5/8/2024 under ‘Article 165 (6) of [the Constitution](#) and Rule 21 Practice and Procedure in the High Court Rules 2021’.
2. He seeks inter-alia an order for re-sentence on the grounds that he was charged in Kilungu PM CR (S.O) 70/2007 for incest contrary to section 20 (1) of the [Sexual Offences Act](#), and sentenced to life imprisonment.
3. He filed appeals in this court (Machakos Criminal Appeal 181/2007) and in the Court of Appeal (Nairobi Criminal Appeal 397/10) where his appeal was dismissed and the conviction upheld.
4. He now comes before this court for re-sentence.
5. In his submissions he relies on Ogolla S/O Owuor versus Republic (1954) EACA 270 on the proposition that a court does not alter a sentence unless the trial judge has acted on wrong principles; Shadrack Kipkoech Kagoi versus Republic Eldoret Criminal Appeal 253/2003 (COA) where the court emphasized the discretion of trial court in sentencing and will only be interfered with an account of being excessive or in error.
6. He also cites section 26 (3) of the Penal Code and 35 (1) of the same Code.
7. Section 26 provides for imprisonment in the following terms;



- (1) A sentence of imprisonment for any offence shall be to imprisonment or to imprisonment with hard labour as may be required or permitted by the law under which the offence is punishable.
 - (2) Save as may be expressly provided by the law under which the offence concerned is punishable, a person liable to imprisonment for life or any other period may be sentenced to any shorter term.
 - (3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment:

Provided that—

 - (i) where the law concerned provides for a minimum sentence of imprisonment, a fine shall not be substituted for imprisonment;
8. Section 35 provides for Conditional discharged
- (1) Where a court by or before which a person is convicted of an offence is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order under the *Probation of Offenders Act* (Cap. 64) is not appropriate, the court may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein.
 - (2) Before making an order discharging a person subject to the condition referred to in subsection (1), the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he shall be liable to be sentenced for the original offence.
 - (3) Where an order discharging an offender under this section is made, the court may order him to pay the whole, or any part, of the costs of and incidental to the prosecution, and of any compensation adjudged under section 31.
9. He relies on section 333(2) of the Criminal Procedure Code and its application in *Ahamed Abolfathi Mohammed and Another Versus Republic* [2018] eKLR
10. The application is opposed on the ground that the court lacks the jurisdiction to revise the orders of the a superior court - and of a judge of equal jurisdiction - that the court's supervisory powers are over the subordinate courts and not over itself.
11. I have considered the applicant's submissions - and the grounds of opposition by respondent.
12. The issue is whether the prayer is tenable.
13. Article 165 (6) of *the Constitution* empowers this court with supervisory powers over the subordinate courts
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice



14. The court of appeal and the high court where the applicant filed his appeals are not subordinate courts - hence the respondent is right that this court does not have the requisite jurisdiction to revise the orders of those courts.
15. In addition, the Supreme Court in *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) stating as follows;
 69. Our findings hereinabove effectively lead us to the conclusion that the judgment of the Court of Appeal delivered on October 7, 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
16. The applicant was charged with a sexual offence . His sentence was upheld by this court and the court of appeal , The Supreme Court has guided as above. In that case the Supreme Court reinstated the minimum mandatory sentence and went on to direct that the appellant be found to be returned to prison to serve his full sentence.
17. Clearly there for the prayer sought for resentence is untenable.
18. However, the applicant is not without recourse. He can petition the Power of Mercy Committee under article 133 of *the Constitution* and the *Power of Mercy Act* Cap. 94 or direct his application to the Supreme Court.
19. In the circumstance the application is denied.

DATED, SIGNED AND DELIVERED VIRTUALLY ON 15TH OCTOBER 2025

MUMBUA T MATHEKA

JUDGE

Court assistant: Chrispol

Applicant present

Mr. Kazungu for state

