



**Kanyi v Republic (Criminal Miscellaneous Application E041 of 2024)
[2025] KEHC 17710 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E041 OF 2024
WM KAGENDO., J
NOVEMBER 27, 2025**

BETWEEN

JAMES KANYORO KANYI APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. The homemade notice of motion was seeking the following:
 - i. That, this Hon. Court has unlimited jurisdiction.(sic)
 - ii. That section 364(1) (b) in the case of a proceedings in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the high court may-
 - (b) In the case of any other order than an order of acquittal, alter or reverse the order.
2. The Applicant was sentenced to 10 years imprisonment for the offence of Rape contrary to 3(1) as read with Section 3(3) of the *Sexual Offences Act*.
3. He lodged his first appeal vide HCCR. Application No. E083 of 2022 at Mombasa where the appeal was dismissed on both conviction and sentence.
4. Has now approached this Hon. Court pursuant to the declaration of the High Court in Machakos (Hon. G.V. Odunga J) in the case of HC. Constitution Petition No. 017/2021, that all sexual offenders who are convicted and sentenced under mandatory minimum penal laws are deserving to have their mitigation taken into account in their sentences.
5. He mitigated in the trial court but the same was not considered and he wishes that his mitigating circumstances as outlined in the statement do count.



6. I have looked at both the trial record and the appeal. The Hon Lady Justice Onginjo took in to account the issue of the sentence and mitigation on appeal. She noted that the applicant, being an employee took advantage of a young girl who even attempted to take her life. Those are aggravating circumstances. He is lucky he got a lenient, sentence.

The Application is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 27TH DAY OF NOVEMBER 2025**

HON. LADY JUSTICE W. K. MICHENI JUDGE

In the presence of:

Applicant Respondent: Sirima

Court Assistant: Ms Bebora

