



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ouma v Republic (Miscellaneous Criminal Application  
E054 of 2021) [2025] KEHC 273 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 273 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS CRIMINAL APPLICATION E054 OF 2021**

**WM MUSYOKA, J  
JANUARY 24, 2025**

**BETWEEN**

**ALFRED NYONGESA OUMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from a sentence order, in Busia CMCCRC No. 819 of 2011,  
by Hon. TW Cherere, Chief Magistrate, CM, of 10th September 2013)*

**RULING**

1. The applicant herein had been convicted of defiling a girl of 14 years, contrary to section 8(1)(3) of the [Sexual Offences Act](#), No. 3 of 2006, and sentenced to serve 20 years imprisonment, on 10<sup>th</sup> September 2013, in Busia CMCCRC No. 819 of 2011.
2. He filed an appeal, in Busia HCCRA No. 65 of 2013, principally against the sentence. He withdrew that appeal, on 17<sup>th</sup> February 2015, after the Respondent filed a notice of enhancement of sentence, under section 354(3)(b) of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya.
3. He has now moved this court, by way of an application for review of the sentence that was imposed on him by the trial court.
4. His application has been opposed by the respondent, vide written submissions, dated 28<sup>th</sup> November 2024, where it is argued, on the basis of [R. vs. Joshua Gichuki Mwangi](#) Supreme Court Petition No. E018 of 2023, that the mandatory sentences or minimum sentences in the [Penal Code](#), the [Sexual Offences Act](#) or any other statute are not invalid, contrary to the perception of many, that that had been the effect of [Francis Karioko Muruatetu & another vs. Republic](#) [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ).



5. The Supreme Court has resolved the issue of mandatory and minimum sentences, in *Republic vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) (Koome, CJ, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), where it was held that the decisions in *Maingi & 5 others vs. Director of Public Prosecutions & another* [2022] KEHC 13118 (KLR) (Odunga, J) and *Edwin Wachira & 9 others vs. Republic* Mombasa HC Petition No. 97 of 2021 (Mativo, J), that mandatory minimum and maximum sentences, prescribed for sexual offences under the *Sexual Offences Act* were unconstitutional, was bad law. In view of that, the application herein would be wholly without merit.
6. Upon a sentence being pronounced by a trial court, the High Court intervenes only on appeal or revision. An appeal was filed, with respect to the proceedings of the trial court, the subject of these proceedings, where the sentence would have been considered or reconsidered. The applicant chose to withdraw that appeal. He cannot now purport to revive or resurrect that appeal, by way of the review sought herein.
7. There would be no jurisdiction for me to intervene in the matter in the manner proposed. I, accordingly, dismiss the application, herein, which is undated, but was filed herein on some unknown or undisclosed date in 2021. This file shall be closed. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 24<sup>TH</sup> DAY OF JANUARY 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Alfred Nyongesa Ouma, the applicant, in person.

**Advocates**

Mr. Onanda Antony, instructed by the Director of Public Prosecutions, for the respondent.

