



**Ariko v Republic (Miscellaneous Criminal Application
E066 of 2023) [2024] KEHC 599 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 599 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E066 OF 2023**

**DO OGEMBO, J
JANUARY 30, 2024**

BETWEEN

STEPHEN OCHIENG OMONDI ARIKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, herein Stephen Ochieng Ariko was charged with the offence of Defilement contrary to **Section 8(1) as read with 8(3) of the *Sexual Offences Act, No. 3 of 2006***. He was convicted on the same and sentenced to serve 20 years imprisonment on 15-11-2021. This was in CM's court Siaya, S.O. No. E002/2021.
2. His appeal vide *High Court Criminal Appeal No. E025 of 2021 (Siaya)*, was dismissed on 15-3-2022.
3. The applicant has now moved this court by way of a Notice of Motion application dated 28-4-2023 and filed on 6-6-2023, praying that his sentence be reviewed on grounds that mandatory minimum sentence have been declared unconstitutional. He has referred this court to the case of *Jared Koiti Injiri Vs R (Criminal Appeal No. 93 of 2014)*. In his submissions he has also raised several factors of mitigation including that he is remorseful and has been rehabilitated.
4. This court must state that the Supreme Court in the *Muruatetu case* only declared the mandatory nature of minimum sentences unconstitutional. The court did not declare such sentence wholly unconstitutional. Mandatory sentences were declared unconstitutional only to the extent that they usurped or took away the discretion of the court on the issue of sentence. And this explains where such cases were referred back for the courts to take the mitigation of the accused and proceed to re-sentence the subjects.



5. I have considered the record of proceedings before the trial court. Same clearly show that prior to the sentence of the applicant, the trial court accorded the applicant the opportunity to mitigate. This was on 4-11-2021. And he had this to say;

“I pray that court knows that I am an only child. I have another wife and children who depend on me. I pray that court considers that.”

6. The court went on to consider the mitigation and also the social presentence report and the Victim Impact Report before passing the sentence. This is the same sentence confirmed by the High court in its judgment dismissing the appeal of the applicant.

7. Having been accorded the opportunity to mitigate, and the same having been considered, this application of the applicant totally lacks in my merit. What the applicant requires of this court to do is tantamount to this court sitting on appeal or revision of a decision of a Judge of concurrent jurisdiction. Neither *the Constitution* nor any statute accords this court any such jurisdiction and this court must reject any invitation to acquire any such jurisdiction.

8. The sum total is that the application of the applicant herein dated 28-4-2023 lacks any merit. I dismiss the same wholly.

9. It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF JANUARY, 2024

D.O. OGEMBO

JUDGE

1.2024

Court:

Ruling read out in court in the presence of the Accused and Ms. Mumu for State.

D.O. OGEMBO

JUDGE

1.2024

