



REPUBLIC OF KENYA



**KENYA LAW**  
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**Olambo v Republic (Criminal Petition E016 of 2023)  
[2024] KEHC 606 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 606 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL PETITION E016 OF 2023  
DO OGEMBO, J  
JANUARY 30, 2024**

**BETWEEN**

**WILLIAM OUMA OLAMBO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein, William Ouma Olambo has filed an application herein on 23.3.2023. The same seeks that this court revises his sentence. It is supported by his own affidavit dated and sworn on 16.3.2023 in which he pleads for a lesser sentence. This application was canvassed by way of written submissions.
2. In his submissions, the applicant has submitted that he was tried, convicted and sentenced to serve 20 years imprisonment for the offence of Defilement contrary to Section 8 (1) as read with Section 8 (2) of the *Sexual Offences Act*, No. 3 of 2006. That his appeal against the conviction and sentence was wholly dismissed by the High Court. He has based his submissions on Machakos Petition No. E017/2021 Odunga J.) and Mombasa Petition No. 88/2021 (Mativo J), both of which ruled that mandatory minimum sentences are unconstitutional. And also *Jared Koiti Injiri -Vs- R*, Criminal Appeal No. 93/2014 and *Kwin Mangondi - Vs- R*, Criminal Appeal No. 66/2019. He has annexed to his submissions testimonials showing courses he has undertaken while in prison.
3. The prosecution has not made any substantive response to this application.
4. I have considered this application of the applicant. I have considered the record of proceedings both of the lower court and the High Court on appeal. The record shows that the applicant was charged with the offence of defilement Contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act*, No.3 of 2006.



5. After undergoing full trial, he was convicted and sentenced to serve 20 years imprisonment. This was on 12.4.2016. Prior to his sentence, the applicant was on 11.4.2016 accorded the opportunity to mitigate. He indeed mitigated and stated:

“I am alone at home. I have young children one is 3 years and the other 5 years. I pray for court to assist me.”
6. The court went on to consider the said mitigation when in sentencing the applicant, the court noted:

“I have considered the mitigation by the accused and the nature of the offence. He is to serve imprisonment for a period of 20 years. Right of Appeal 14 days.”
7. The applicant thereafter filed Appeal No. 98 of 2016, which appeal was dismissed wholly on 2.2.2018.
8. Section 8 (3) of the *Sexual Offences Act* under which the applicant was charged, states: -

“A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”
9. In the Supreme Court Petition No. 15 and 16 of 2015, Francis Muruatetu and Others Vs R, the Supreme Court ordered that minimum mandatory death sentence is unconstitutional in as far as it took away the court’s discretionary powers of sentencing. The supreme court accordingly back the matter to the trial court to listen to the mitigation factors of the convicts before the court could resentence them. To me, this is the basis of resentencing. That believing that the sentence of death was mandatory in murder cases, the trial court never accorded the applicants to mitigate. Hence the order of the Supreme Court that they be accorded the opportunity to present their mitigation before they are re-sentenced.
10. In this case, the applicant was clearly accorded the opportunity to mitigate which mitigation was taken into account by the trial court in passing sentence. To that extent, I do not see any constitutional rights of the applicant breached in any way by way of his sentence.
11. The second issue that this application raises, is whether this court has the legal power and jurisdiction to revise any orders of a Judge of concurrent jurisdiction. In this case, the applicant filed an appeal against both conviction and sentence. The whole appeal of the applicant was dismissed by the Hon. Justice D.S. Majanja on 2.2.2018.
12. Article 165 (6) and (7) of *the Constitution* of Kenya gives this court powers of revision over orders of subordinate courts, body or authority exercising quasi-judicial functions and tribunals. It does not extend such jurisdiction to courts of parallel jurisdiction.
13. Neither does the *Criminal Procedure Code*, Cap 75, grant any such powers to the High Court. Section 362 of the Act limits such powers of revision to orders or findings of subordinate courts.
14. In asking this court to re-look at the orders of a court of concurrent jurisdiction, the applicant is basically asking of this court to sit on appeal against its own judgment. This court declines any such invitation on the ground of lack of jurisdiction.
15. The sum total is that the application of the applicant lacks in any merit. I dismiss it wholly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 30<sup>TH</sup> DAY OF JANUARY, 2024**



**D.O. OGEMBO**

**JUDGE**

**30/1/2024**

**Court:**

**Ruling read out in presence of applicant and Ms. Mumo for State.**

**D.O. OGEMBO**

**JUDGE**

**30/1/2024**

