



**Otieno v Republic (Miscellaneous Criminal Application  
E003 of 2022) [2024] KEHC 2228 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2228 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2022**

**JK SERGON, J**

**FEBRUARY 29, 2024**

**BETWEEN**

**WILLIAM OCHIENG OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was convicted and sentenced to fifteen (15) 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 by Hon. S. Mokuia vide Criminal Case SO No 83 of 2016.
2. The Applicant being dissatisfied with the conviction to the mandatory minimum prescribed sentence, appealed to the High Court vide Kericho High Court Criminal Appeal No 10 of 2019, whereby Justice Dulu upheld both sentence and conviction.
3. The Applicant has now filed the instant application seeking for rehearing and resentencing in light of the recent decision by Odunga J. (as he the was) in [Maingi & 5 others v Director of Public Prosecutions & another](#) (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment) where the court declared that the mandatory minimum sentences under the [Sexual Offences Act](#) are unconstitutional.
4. The prosecution opposed the application and submitted that the petition herein was premature and further that the applicant ought to have appealed on the grounds that the sentence meted out by the trial court was harsh.
5. The following legal provisions empower this court to entertain resentencing applications; Article 165 of the [Constitution](#) which clothes the High Court with jurisdiction to hear and determine applications for redress for a denial, violation or infringement of or threat to, a right or fundamental freedom in the bill of rights as well as Article 50 (2) (p) (q) as read with Article 50 (6) (a) and (b) of the [Constitution](#).



- 6. It is clear from the instant petition that the applicant invoked this court’s appellate jurisdiction, this court heard and determined the appeal and subsequently upheld the conviction and sentence of the trial court. The record of the trial Court clearly indicates that the mitigating factors were considered. The fact that minimum sentence were outlawed did not in itself make the sentence meted out to be unlawful. I therefore find that this court cannot entertain the application for rehearing and resentencing. In the present petition, I find no further new and compelling evidence that has become available to entertain the issues on review of sentence.
- 7. For those reasons, I dismiss the petition for want of jurisdiction.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 29<sup>TH</sup> DAY OF FEBRUARY, 2024.**

.....

**J.K. SERGON**

**JUDGE**

In the presence of:

C/Assistant - Rutoh

Prosecutor – Mr. Musyoki

Petitioner – Present in Person

