



**Muhoori v Republic (Criminal Revision E207 of 2022)
[2024] KEHC 1785 (KLR) (28 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E207 OF 2022
TM MATHEKA, J
FEBRUARY 28, 2024**

BETWEEN

ISAAC MATIBA MUHOORI APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. On 23rd February 2018 The applicant was charged Makindu SPM Court S.O Case no. 16 of 2018 with the offence of rape contrary to section 3(1) (a) as read with Section 3(3) of the [Sexual Offences Act](#). He pleaded not guilty. He was tried, convicted and sentenced to 10 years' imprisonment on 19th May 2020.
2. He lodged an appeal HCCRA E026 of 2020 against both the conviction and sentence. It was dismissed by Hon Dulu J on 22rd March 2022.
3. Inspired by the holding in Philip Maingi & 5 Others v R Petition no 17 of 2021 Machakos, and the jurisprudence with regard to mandatory minimum sentences in the [Sexual Offences Act](#), relying on Article 25(c) of [the Constitution](#), citing [Christopher Ochieng v Republic](#) Appeal no 93 of 2014 COA, [Evans Wanjala Wanyonyi v Republic](#) appeal no 312 of 2018 Eldoret in his undated Chamber Summons filed on 27/10/2022 he seeks review of his sentence.
4. His supporting affidavit however appears to have been pulled from another person's Petition, who had been charged with defilement and sentenced to 12 years' imprisonment on 2nd May 2019.
5. This would have been a reason to throw out the application but the court is aware of the dire lack of legal aid for persons like the applicant who have to rely on scant paralegal assistance within the Prison.
6. The applicant has filed submissions in support of the application and lays the following grounds.
 - a. That he is now fully rehabilitated



- b. That is sentence should start from the date of arrest on 21/02/2018.
 - c. That he is a young man who needs to start afresh and become a family person.
 - d. That he promises to lead a law abiding life after his release.
7. He submitted that he is opposed to the sentence given by the law court magistrate and has no trust in it. He urged this court to come up with a fair decision and reduce the time served in prison.
 8. He submitted that he is fully rehabilitated and is now experienced in masonry, carpentry and tailoring. That he has also received Jesus Christ as his savior and is now Christ's ambassador in prison.
 9. He relied on section 333 (2) of the *Criminal Procedure Code* (CPC) for the submission that the time spent in custody should be considered as part of imprisonment.
 10. He submitted that the court should consider his delicate age and give him a chance to start a family life. He promised to be a role model in his community and educate them on the results of committing crime.
 11. The Assistant Director of Public Prosecutions, Mr. Lucas Tanui submitted that the applicant has a second right of appeal at the Court of Appeal
 12. He submitted that a court of concurrent jurisdiction has already heard and determined the appeal hence this court lacks jurisdiction to hear the appeal again.
 13. He submitted that if the court is minded to consider this application regarding the period he spent in custody before he was sentenced, it should ascertain that the applicant was in remand during the trial.
 14. The only issue for determination is whether the application has merit.

Analysis and Determination

15. This court as already made a determination that the sentence is lawful and cannot therefore sit on appeal in its own decision. Any further grievance with the sentence should be escalated to the Court of Appeal.
16. In dismissing the appeal Hon. Dulu J stated:

‘The sentence imposed is lawful. I will not interfere with the sentence imposed. ... Consequently, and for the above reasons, I find no merit in the appeal. I dismiss the appeal and uphold both the conviction and the sentence. ‘
17. While sentencing the applicant on 19th May 2020, the trial court expressed itself as follows;

“The law under Section 3(1)(a) as read with Section 3(3) of the *Sexual Offence Act* is very clear the sentence to be meted out when the accused is convicted and will apply the same since will take into considering guidelines under sentencing guidelines, 2016 the age of the accused, he is a youth, he is a first offender, his mitigation and the period he has been in remand as such the accused is hereby sentenced to serve 10 years’ imprisonment.
18. Section 3(3) of the *SOA* provides that A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.



19. Evidently the learned trial magistrate appears to have been alive to the period the applicant was in custody and had it in mind, and had view of the provisions of s. 3 (3) of the SOA, when she imposed the 10-year imprisonment sentence. The Judge also considered the sentence as imposed and was satisfied that it being lawful and upheld it. This court being of concurrent jurisdiction would not be in a position to review its own sentence.
20. The application is there for rejected for want of jurisdiction.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH FEBRUARY 2024

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MUMBUA T MATHEKA

JUDGE

CA Nelima

For State Tanui

Applicant Present*

