



**Kinango v Republic (Miscellaneous Criminal Application
E170 of 2023) [2024] KEHC 4366 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E170 OF 2023**

**A. ONG'INJO, J
MARCH 15, 2024**

BETWEEN

MWAKAMSHA KAZUNGU KINANGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant sought that this Court consider his mitigation and give him a lenient re-sentence based on the holding in Machakos High Court Petition No. E017 of 2021 as his current sentence is unconstitutional.
2. In CR.A. No. 86 of 2019 *Mwakamsha Kazungu Kinango v Republic*, Nyakundi J while dismissing the applicants appeal had this to say in relation to the sentence:-

“The Appellant was a 1st offender, however, he took advantage of the complainant who is disabled being partially blind and when confronted had proposed to conceal the offence by offering to marry the complainant”.
3. The trial Magistrate in passing sentence was not constrained by the minimum mandatory sentence as prescribed but weighed the seriousness of the offence and exercised her judicial discretion. I find no reason to interfere with the sentence of the trial Magistrate.
4. This confirms that the prayer the applicant seeks before this court was already dealt with and therefore overtaken by events.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 15TH DAY OF MARCH 2024**

HON. LADY JUSTICE A. ONG'INJO



JUDGE

In the presence of: -

Etropia - Court Assistant

Mr. Ngiri for the Respondent

HON. LADY JUSTICE A. ONG'INJO

JUDGE

