



**Mwachipanga v Republic (Criminal Revision E090 of 2023)  
[2024] KEHC 6827 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 6827 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E090 OF 2023  
GMA DULU, J  
APRIL 30, 2024**

**BETWEEN**

**SHAIBU YUSUF MWACHIPANGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is an application for review of sentence filed on 25<sup>th</sup> May 2023 relying on the provisions of Section 333(2) of the *Criminal Procedure Code*, as well as the court decisions in Petition No. 97 of 2021 Mombasa – *Edwin Wachira & 9 Others v Republic*, and Petition No. 15 of 2020 – *Jonah & 87 others v Kenya Prisons Service* (2021) KEHC.
2. The application was filed with a supporting affidavit sworn by the applicant on 6<sup>th</sup> May 2023 in which the applicant depones that in Taveta PM Criminal Case No. 574 of 2014 he was convicted under the *Sexual Offences Act* and sentenced to 30 years imprisonment; that in Voi High Court Criminal Appeal No. 7 of 2017 his appeal was dismissed conviction and sentence upheld; and that in Malindi COA Criminal Appeal No. 31 of 2017 his appeal was also dismissed conviction and sentence upheld. The applicant further depones that courts should have discretion in sentencing, contrary to the existing statutory provisions for minimum or mandatory sentences under the *Sexual Offences Act*.
3. The application was canvassed through written submissions filed by the applicant (convict) and oral submissions made by the learned Prosecuting Counsel Mr. Sirima.
4. I note that in his oral submissions, Mr. Sirima for the DPP, informed this court that the same applicant had already come to this court for revision of sentence in Voi High Court Criminal Revision No. 278 of 2022 which was dismissed by this court – through Judge Ong’ino. Counsel therefore submitted that the present application for review of sentence is an abuse of the court process.



5. I have myself perused the revision file No. E278 of 2022 and the reasoning of the High Court in declining to review the sentence. The decision to decline revision of sentence was based on the fact that the applicant as a parent abused his position of trust. Thus this court cannot be told that the High Court did not take into account the relevant factors in decline to review the sentence.
6. In addition to the above, though the applicant has come to this court a second time on revision of sentence complaining about statutory provisions of minimum or mandatory sentences under the *Sexual Offences Act*, it is clear from the reasoning of the Court of Appeal in his Malindi Criminal Appeal No. 31 of 2017 *S.Y.M v Republic*, that the trial court convicted the appellant under Section 20(1) of the *Sexual Offences Act* and because the victim was under 18 years, the appellant should have been sentenced to life imprisonment, but the trial court used its discretion and sentenced him to 30 years imprisonment.
7. In my view therefore, the applicant is abusing the process of this court by again coming to this court for review of sentence. If he is dissatisfied with the disallowance of his request for review of sentence by Ong'injo J, his only avenue is to approach the Court of Appeal, not to come back to this same court for a second review of sentence on the same facts and circumstances.
8. I thus find this second application for review of sentence to be incompetent. I strike out the application.

**DATED, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF APRIL 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred – Court Assistant

Applicant

Mr. Sirima for State

