



**Mwashigadi v Republic (Petition E093 of 2023)
[2024] KEHC 9568 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E093 OF 2023
GMA DULU, J
JUNE 27, 2024**

BETWEEN

DAMIAN MWARUTA MWASHIGADI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Though this file is designated as a constitutional petition, it is infact an application filed on 23rd June 2023 for review of sentence, under Article 50(2)(p)(q) of the *Constitution*, Section 333(2) of the *Criminal Procedure Code* (Cap.75), and also pursuant to the court decision in the case *Vincent Sila Jona & 87 Others v Attorney General*.
2. The applicant herein asks this court to factor the period he was in remand custody during trial in his prison sentence, and also consider granting him probation sentence.
3. The application was filed with a supporting affidavit sworn by the applicant Damian Mwaruta Mwashigadi on 23rd May 2023, in which the Supreme Court decision of *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR is deponed to and relied upon.
4. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the applicant as well as the submissions filed by the Director of Public Prosecutions. I note that the Director of Public Prosecutions has opposed the application on the ground that this court has no jurisdiction to review the sentence herein.
5. On my part, having considered the matter, I note that the applicant was convicted of defilement in Wundanyi SRM Criminal Case No. 8 of 2014 and sentenced to life imprisonment on 16th January 2015.



6. He then appealed to this court in Voi High Court Criminal Appeal No. 27 of 2015 and his appeal was dismissed on 23rd March 2017 and both conviction and sentence upheld. He then appealed to the Court of Appeal in Mombasa Criminal Appeal No. 28 of 2017 and his sentence was reduced to 30 years imprisonment from the date of his conviction.
7. It is of note that, in reducing the sentence, the Court of Appeal specifically stated that Section 20(1) of the *Sexual Offences Act* provides for a maximum and not a mandatory life prison sentence, and decided to reduce the life prison sentence to 30 years imprisonment.
8. In my view therefore, with the above substantive decision of the Court of Appeal of the sentence herein, this court cannot or does not have jurisdiction to review the prison sentence as requested, as the Court of Appeal is a superior court to the High Court.
9. I accordingly find no merits in the request for review of sentence herein, and the application is thus dismissed.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF JUNE 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant in person – virtual

Mr. Sirima for State

