



REPUBLIC OF KENYA



**Kithinji v Republic (Criminal Revision E007 of 2023)
[2024] KEHC 14204 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL REVISION E007 OF 2023
AK NDUNG’U, J
NOVEMBER 14, 2024**

BETWEEN

JADIEL KIUNGA KITHINJI APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. This ruling resolves the preliminary objection to the undated Notice of Motion filed in court on 20th June, 2023 brought under Article 22(1), 23(1), 25(D), 27, 50(2), (Q), 51(2), 165(3)(A) (B)(D(i)(ii)5) (6) and (7) of the Constitution of Kenya, 2010, Section 327(2), 362 and 364 of the Criminal Procedure Code seeking the following orders-
 - i. That this Honourable Court be pleased to allow this application to be heard and determined for the interest of justice in sentencing.
 - ii. That this court be pleased to grant the orders sought for review of the sentence of life imposed on the Applicant.
 - iii. That this court be pleased to consider and invoke the provisions of Article 5(2)(p) of the Constitution and sections 216, 329 and 333(2) of the Criminal Procedure Code.
 - iv. That this Honourable Court be pleased to review the sentence of life to a determinate term after consideration of the Applicant’s mitigation.
 - v. That no cost of this application as the Applicant is a pauper.
2. The application is premised on the grounds on the face of the application and the annexed affidavit sworn by the Applicant. In a nutshell, the Applicant’s case is that he was arraigned in court and charged in Criminal Case No.1 of 2018 at Nanyuki for the offence of defilement contrary to section 8(1)(3) of Sexual Offences Act 2006 and was convicted to serve 20 years imprisonment on 11/1/2019. Having



been dissatisfied with both the conviction and sentence, the Applicant appealed against both in High Court vide Appeal No.25 of 2019 at Nanyuki whereby the appeal was head and dismissed. He avers that he did not appeal to the Court of Appeal as he was satisfied with the conviction whereupon in respect of this application he only seeks for a review of the imposed sentence and therefore prays that this honourable court do invoke its discretionary powers to review the life sentence imposed on him.

3. The application was opposed by the Respondent's Counsel, who filed a Notice of Preliminary Objection dated 13/2/2024 seeking to raise an objection in limine on points of law.
4. In response to the Respondent's Notice of Preliminary Objection, the Applicant filed undated Further Mitigation Grounds of Appeal seeking leave of the court to respond to the same whereby he raised the following supplementary grounds of mitigation –
 - a. That this application/petition is filed under provisions of Article 2, 23, 7(1) (2), 50(2)(q) and 165 of the Constitution of Kenya seeking this Honourable Court to be pleased to reconsider the mandatory minimum sentence passed and be pleased to resentence, premised on rehabilitate sentence rather than retributive punishment.
 - b. That the Applicant is remorseful, rehabilitated and no longer an treat to the community having learnt life skills and undergone spiritual nourishment through different courses taken while in prison, thus deserving a second chance to reunite with family.
5. For a start, it is noted that the Notice of Motion challenges a non-existent life imprisonment though in the affidavit in support he correctly refers to a sentence of 20 years which is the sentence that was imposed on him by the trial court.
6. It is also worthy of note that despite the preliminary objection herein being one raising a jurisdictional issue, the Applicant fails to challenge the point of law raised and only responds to it through facts by filing what he terms "Further mitigation grounds of appeal".
7. The Applicant's conviction and sentence were subject of appeal in HCCRA NO. 25 of 2019. This court, (Waweru J Rtd) dismissed the appeal and confirmed the sentence.
8. Counsel for the Respondent is thus spot on in his submission that a court of concurrent jurisdiction has already dealt with the issue of sentence ant this court has no power to review the finding of a court of concurrent jurisdiction.
9. In the premises, I have no jurisdiction to entertain the Notice of Motion before court. The preliminary objection thus succeeds and is upheld. The Notice of Motion undated but filed on 20/06/23 is hereby dismissed.

DATED SIGNED AND DELIVERED AT NANYUKI THIS 14TH NOVEMBER 2024

A.K. NDUNG'U

JUDGE

