



**Kipkemei v Republic (Criminal Revision E037 of 2024)
[2024] KEHC 9695 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E037 OF 2024
RB NGETICH, J
JULY 30, 2024**

BETWEEN

JOHANA KIPKEMEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual offences Act No.3 of 2006. He was found guilty as charged, convicted and sentenced to life imprisonment. He appealed to the High where the court considered the period served in prison and ordered that the sentence to run from the date of arrest.
2. The applicant has now approached this court vide a notice of motion application brought under the provisions of Articles 22(1), 23(1),25(c), 27(1)(4), 50(2)(p)(q), 159(2) and 165(3) of the constitution of Kenya, 2010, probation of offenders Act Cap 64 Laws of Kenya and the Community service orders Act Cap 10 laws of Kenya.
3. The applicant in the application herein seeks sentence review on ground that the sentence imposed was harsh and excessive in view of the facts and circumstances of the offence. He prays for determinate sentence.
4. The Applicant avers in his supporting affidavit that this Honourable court is seized of competent jurisdiction under Article 165(3)(b) of the constitution of Kenya to hear and determine this matter. When the matter came up for hearing on the 10th July 2024, the applicant prayed for determinate sentence.
5. The prosecution counsel Ms. Ratemo submitted that she had no objection to the applicant being granted definite number of years to serve.



Social Inquiry Report

6. From the report, the victim is now a form 4 student. The father of the victim and the victim are not opposed to applicant being granted determinate sentence. The community and local administration are not also opposed to accused being granted determinate sentence. They confirm that there is no animosity between the applicant's and victim's family.
7. The Applicant understands the gravity of the offence. He says he is sickly and aging and prayed for determinate sentence.

Determination

8. I have considered the application. I find that the application invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
9. From the report, the applicant has served 11 years 3 months. I take note of the fact that the victim, his family and the community have since forgiven the applicant and thus do not oppose the application for the applicant to be granted determinate sentence.
10. I take note of the change of jurisprudence in respect to life sentence. In the case of Malindi Court of Appeal Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso v Republic* the court of appeal declared life imprisonment unconstitutional. (delivered on 7th July 2023)
11. In view of the above, the applicant ought to benefit from change in jurisprudence by being granted determinate sentence. I take note of the fact that the child defiled was 11 years and I am inclined to impose sentence of 30 years imprisonment.

Final Orders: -

12.
 1. Life sentence set aside.
 2. The Applicant is hereby sentenced to 30 years imprisonment.
 3. Period served in remand from date of arrest and the period served in prison after conviction to be computed in sentence above.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30TH DAY OF JULY 2024.

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis

Ms. Ratemo for state



Applicant present

