



**Kaniaru v Republic (Miscellaneous Criminal Application
E006 of 2024) [2024] KEHC 13552 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2024**

**JM NANG'EA, J
OCTOBER 31, 2024**

BETWEEN

PATRICK KIRUMA KANIARU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted of Defilement Contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006 in Criminal Case No. 74 of 2010 before Nakuru Law Courts and sentenced to life imprisonment. His first appeal to this court and second appeal to the Court of Appeal were dismissed.
2. The applicant does not specify the reliefs he craves herein. He, however, seems to base the application under Articles 23 and 165(3) (b) of the [Constitution](#) as per the application and affidavit in support thereof. The Written Submissions filed on 8/1/2024 indicate that he seeks review of the life sentence saying that it has been declared unconstitutional.
3. I have perused the application, the applicant's submissions and the Prosecution Counsel's submissions in reply.
4. Article 23(1) of the [Constitution](#) provides that the High Court has jurisdiction to hear and determine applications for redress, denial, violation, or infringement of fundamental freedoms in the Bill of Rights. Article 165 (3) (b) which is also relied upon grants the same power to the High Court.
5. As per the Prosecutor's Submissions, the Supreme Court of Kenya in its latest decision regarding minimum mandatory sentences under the [Sexual Offences Act](#) and any other laws has settled the legal position in Petition No. E018 of 2023 ([Republic vs Joshua Gichuki Mwangi \(Respondent\) and Initiative for Strategic Litigation in Africa & 3 Others \(Amicus Curiae\)](#)). The apex court finally declared minimum mandatory sentences provided for by certain laws to be constitutional.



6. Case law in *Dismus Wafula Keirake vs Republic* (2018) eKLR and other judicial decisions cited in the applicant's submissions which gave trial courts discretion to vary mandatory sentences, including life imprisonment prescribed for certain offences under the *Sexual Offences Act*, depending on the particular circumstances of a case are therefore no longer good law. The applicant's fundamental rights and freedoms guaranteed by the Constitution have not been infringed by meting out the lawful sentence of life imprisonment, a mandatory sentence under Section 8(2) of the *Sexual Offences Act*. Besides, a court of concurrent jurisdiction (A Mshila J) has dismissed the applicant's appeal on both conviction and sentence.
7. Consequently, this application is dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 31ST DAY OF OCTOBER 2024 IN THE PRESENCE OF:

The state, Ms Sang

The Applicant, present

The Court Assistant, Jeniffer

J. M. NANG'EA, JUDGE.

