



REPUBLIC OF KENYA



KENYA LAW
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**Joel v DPP (Criminal Petition E043 of 2023)
[2024] KEHC 13844 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL PETITION E043 OF 2023
LW GITARI, J
OCTOBER 29, 2024**

BETWEEN

KELVIN MWNDA JOEL PETITIONER

AND

DPP RESPONDENT

RULING

1. The Petitioner has filed this petition seeking the following orders:-
 1. That, a declaration be made under the provisions of Article 27, 23(3)(d) of the Constitution that Section 8(2) of the Sexual Offences Act are unconstitutional to the extent that they provide for the mandatory life imprisonment sentence to accused persons convicted of Defilement which infringes the inherent right to every accused person to a fair trial as envisaged under Article 25(c) of the Constitution.
 2. That this honorable court be pleased to issue a declaration that the minimum – maximum sentencing provisions under the Sexual Offences Act are unconstitutional in so far as they infringe on the inherent right of every accused person to have his/her mitigating factors considered as envisaged under Article 50(2) of the Constitution as read with Section 216 and Section 329 of the Criminal Procedure Code.
 3. That, a declaration be made subject to prayer No.1, 2, and 3 that I the petitioner herein be remitted back to the trial court for rehearing and sentence only so that my mitigating factors can be considered and appropriate sentence awarded.
2. The petition is supported by the affidavit of petitioner sworn on 26/4/2023. The petition is based on the facts that the applicant was arrested on 4/8/2017 and charged with the offence of defilement contrary to Section 8(1) and (2) of the Sexual Offence Case No.21/2017. He denied the charge and a full trial was conducted. The learned magistrate convicted the applicant and handed him a sentence of



life imprisonment. In his affidavit he avers that he lodged an appeal in the High Court at Meru, Appeal No.9 of 2018 which was heard and eventually dismissed. He has filed this petition contending that the sentence under Section 8(1) and (2) of the Sexual Offences Act is unconstitutional for violating Article 25(c) of the Constitution and Section 216 and 329 of the Criminal Procedure Code. The respondent did not file submissions despite having been given an opportunity to do so.

3. I have considered the petition. The petitioner is primarily challenging the constitutionality of Section 8(2) of the Sexual Offences Act. In its Judgment in Petition No.E018/2023 *Republic v Joshua Gichuki* the Supreme Court held that mandatory minimum sentences do not deprive the Judicial Officers of the power of exercise Judicial discretion. The Supreme Court stated that the sentences prescribed under Section 8 of the Sexual Offences Act was lawful as long as Section 8 of the Sexual Offences Act remains valid. The Supreme Court further stated that, “We reiterate that the Court of Appeal had no jurisdiction to interfere with that sentence.”
4. The applicant is challenging the sentence of life imprisonment imposed on him under the provisions of Section 8(1) as read with Section 8(2) of the Sexual offences Act No. 3 of 2006. As held in the Supreme Court, this court has no jurisdiction to interfere with the sentence prescribed under Section 8(2) of the Sexual Offences Act. The Supreme Court in the above decision has affirmed the validity of the sentence under Section 8(1) (2) of the Sexual Offences. The decision binds this court by dint of the doctrine of ‘Stare Decisis’ which is a constitutional obligation meant to enhance the legal system predictability and certainty. Thus, under the doctrine the precedents set by the Supreme Court are binding on all other courts in the land and is imperative for all court bound by the decisions to rigorously uphold their authority, ensuring the effective functioning of the administration of justice. The Supreme Court went on to say that, “Without this steadfast and uniform commitment, the legal system risks ambiguity, eroding public trust and causing disorder in the administration of justice”
5. In view of the above decision by the Supreme Court, I find that the present petition is without merits as the supreme court has affirmed the validity of the sentence under Section 8 of the Sexual Offences Act which the Petitioner is challenging. The petition is dismissed.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH DAY OF OCTOBER 2024.

L.W. GITARI

JUDGE

