



**LM v Republic (Miscellaneous Criminal Application E102 of 2023)  
[2024] KEHC 13296 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13296 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E102 OF 2023**

**JM NANG'EA, J  
OCTOBER 29, 2024**

**BETWEEN**

**LM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By this undated application filed on 26<sup>th</sup> August 2022 the applicant prays for a lenient sentence, and invocation of the provisions of Section 333(2) of the *Criminal Procedure Code* to factor in the period the applicant was in remand custody awaiting trial. By affidavit in support of the application, the applicant avers that he was convicted in Maralal Law Courts' Criminal Case No 239 of 2013 of the offence of Incest Contrary to Section 20(1) of the *Sexual Offences Act* No 3 of 2006 and sentenced to life imprisonment. His appeal to this court vide Criminal Appeal No 182 of 2013 was dismissed regarding this charge. The applicant further states that he decided not to prefer a second appeal to the Court of Appeal and instead seek re-sentencing before this court.
2. In support of this application the convict cites Machakos High Court Constitutional Petition No E017 of 2021 (*Mueke Maingi & 5 others v Director of Public Prosecutions (DPP)*) in which it was observed that the court's discretion in sentencing should not be fettered by mandatory minimum sentences prescribed under the *Sexual Offences Act*.
3. The prosecution Counsel (Ms Sang) opposes the application. Counsel submits inter alia that a court of concurrent jurisdiction having dismissed the applicant's appeal this court does not have jurisdiction to entertain the application. Ms Sang further referred to the judicial determination in Petition No E018 of 2023 (*Republic v Joshua Gichuki Mwangi*) in which the Supreme Court of Kenya held that the mandatory minimum sentences prescribed under the *Sexual Offences Act* are lawful and/or Constitutional and therefore courts have no jurisdiction to impose lesser sentences. The apex court directed that a litigant challenging such minimum sentences should originate a Petition in the



High Court and if necessary, escalate it to the Court of Appeal and the Supreme Court for a final determination.

4. The applicant did not reply to the prosecution submissions.
5. The central point for determination in this application is whether the court has jurisdiction to re-sentence the applicant as desired. He had been sentenced to life imprisonment in Count 3 pursuant to Section 20(1) of the [Sexual Offences Act](#) No 3 of 2006 which prescribes life imprisonment as the mandatory sentence for a person convicted of committing the offence against a child under the age of 18.
6. As per Ms Sang's submissions, the Supreme Court has settled the law on minimum sentences under the [Sexual Offences Act](#) in the case of [Joshua Gichuki Mwangi supra](#) and therefore the decision in the case of [Mueke Mwangi and 5 others](#) relied upon by the applicant is no longer good law. Neither this court nor the trial court therefore has jurisdiction to resentence the applicant as prayed. Besides, my sister (M. A. Odero (J)) dismissed the applicant's appeal against both conviction and sentence on the charge in question and therefore I have no jurisdiction to revisit the decision as submitted by the prosecution.
7. The upshot is that the court has no jurisdiction to interfere with the life sentence imposed for the offence of Incest Contrary to Section 20(1) of the [Sexual Offences Act](#) No 3 of 2006. In light of the nature of the sentence imposed, it is not possible to invoke Section 333(2) of the [Criminal Procedure Code](#) which requires the court to take into account the period the offender might have spent in remand custody while sentencing him.
8. The application is accordingly dismissed.

**J. M. NANG'EA, JUDGE.**

**RULING DELIVERED THIS 29<sup>TH</sup> DAY OF OCTOBER 2024 IN THE PRESENCE OF:**

The state, Ms Sang for the DPP

The Applicant, present

**J. M. NANG'EA, JUDGE.**

