



**Wamugi v Director of Public Prosecution & another (Petition E006 of 2024)
[2024] KEHC 14975 (KLR) (Civ) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
PETITION E006 OF 2024
CM KARIUKI, J
NOVEMBER 28, 2024**

BETWEEN

BONIFACE MWANGI WAMUGI PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The Petitioner was charged with offence of defilement of a girl contrary to section 8 (1) as read with section 8(2) of *Sexual offences Act*.
2. Particulars being that on 22/3/2014 at Salama Location he intentionally and unlawfully caused his penis to penetrate the vagina of L J W a child aged 13 years.
3. Also faced alternative charge of indecent act on same facts.
4. He was convicted on main charge and sentence to twenty (20) years.
5. He lodged Nyahururu HCCRA 129/2017 challenging the verdict of the trial court the matter was heard and court dismissed the entire appeal on conviction and sentence as it was proved beyond reasonable doubt and the sentence was mandatory minimum sentence (the twenty years) imprisonment vide section 8(3) *Sexual Offences Act*.
6. The petitioner has now moved this court via petition challenging mandatory minimum sentence of 20 years as applied to his case as being unconstitutional.
7. The court thus will look into the constitutionality of the provisions of Article 8 (3) of Sexual Offence Act in light with Supreme Court recent decision on same issue. See the decision of supreme court.



In the case of Petition No. E018 of 2023 – Republic v Joshua Gichuki Mwangi Court: Supreme Court, Kenya; The supreme court of Kenya upheld the constitutionality of the mandatory minimum sentencing for sexual offences, The Supreme Court also distinguished between mandatory sentences and minimum sentences, where mandatory sentences leave no discretion for the judge to individualize punishment whereas minimum sentences set the floor rather than the ceiling. It held that although the term ‘mandatory minimum’ has been used in other jurisdictions, it is not applicable as a legally recognized term in Kenya. A mandatory sentence and minimum sentence can neither be used interchangeably nor in similar circumstances as they refer to two very different sets of meanings and circumstances.

8. The impact of the *Sexual Offences Act*, 2006 has been the minimum mandatory sentencing as a deterrence to perpetrators while offering survivors a sense of justice. Any reversal to this judicial discretion in sentencing would water down the decades of hard work that has gone towards achieving justice and protection for survivors of SGBV- this would be catastrophic.’
9. Thus, this court being bound by the said decision, it has no option but to dismiss the instant matter and uphold the minimum mandatory sentence imposed by the trial court.

JUDGMENT, DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 28TH DAY OF NOVEMBER 2024.

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CHARLES KARIUKI

JUDGE

