



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Lalo v Director of Public Prosecution (Petition E001 of 2022)
[2024] KEHC 15135 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E001 OF 2022
AN ONGERI, J
NOVEMBER 22, 2024
(ARISING FROM COURT OF APPEAL NO. 38 OF 2017 AT MOMBASA)
IN THE MATTER OF ARTICLE 262 OF THE
CONSTITUTION ON CONSEQUENTIAL PROVISIONS
IN THE MATTER OF ARTICLES 22(1) OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 2(5 &6), 3(1), 19,20, 21, 22, 23,
24, 25, 27, 28, 29, 45, 50, 51 & 157 OF THE CONSTITUTION
AND
IN THE MATTER OF ARTICLE 159 & 160(1) OF THE CONSTITUTION
AND
IN THE MATTER OF SECTION 8(3) AND 11 OF
THE SEXUAL OFFENCES ACT NO. 3 OF 2006
AND
IN THE MATTER OF PERSONS DEPRIVED OF LIBERTY ACT
AND
IN THE MATTER OF PREVENTION OF TORTURE ACT, NO. 12 OF 2017
BETWEEN
TSUMA LALO PETITIONER
AND
DIRECTOR OF PUBLIC PROSECUTION RESPONDENT**



JUDGMENT

1. The Petitioner filed the Petition herein on 30th June 2022 seeking to have certain Sections of the *Sexual Offences Act* declared unconstitutional.
2. The Respondent told the court that the said issue has been overtaken since the same was dealt with in Supreme Court Petition No. E018 of 2023.
3. The Petitioner said he wishes to proceed with his Petition.
4. I have considered the prayers in the current Petition together with the supporting affidavit and I find that similar issues were raised and determined in Supreme Court Petition No. E018 of 2023.
5. This court is bound by the doctrine of precedence.
6. The Petitioner stated in his Petition that the mandatory sentence deprives the court of its discretion to pass an appropriate sentence.
7. Further that the *Sexual Offences Act* has caused injustices especially to male offenders by denying the trial court the opportunity to evaluate the circumstances of the case in instances of the case in instances where the female victims are also to blame for their actions.
8. The Petitioner also stated in his Petition that excessive punishment does not serve the ends of justice.
9. Further that the mandatory sentence reduce the court's normal sentencing function to a rubber stamp.
10. The Petitioner also stated that sexual offenders also qualify to be considered for probation.
11. The Petitioner also said that the drafters of the *Sexual Offences Act* in taking steps to curb the menace and trauma caused to victims had good intentions but that the perpetrators must not be condemned by all means but the sentence imposed must meet the constitutional dictates and that rehabilitation should be modeled as a ray of hope for prisoners and not condemnation.
12. I find that the Petitioner has good arguments why he believes that the *Sexual Offences Act* is unconstitutional.
13. However, all these have been overtaken by the decision of the Supreme Court in Petition No. E018 of 2023 where the court dismissed a similar Petition and said that the *Sexual Offences Act* is not unconstitutional.
14. I dismiss the current Petition in view of the binding nature of the Supreme Court decision in Supreme Court Petition No. E018 of 2023.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF NOVEMBER 2024 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Prosecutor:

Court Assistants: Maina/Trizah

