



Kingoo v Office of the Director of Public Prosecution (Miscellaneous Criminal Application E150 of 2022) [2023] KEHC 1628 (KLR) (27 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E150 OF 2022**

A. ONG'INJO, J

FEBRUARY 27, 2023

BETWEEN

MOSES MULI KINGOO APPLICANT

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

(Criminal Appeal No 69 of 2018)

RULING

1. The Applicant was sentenced to serve life imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No 3 of 2006 in Kwale CMC CR Case No 911 of 2010.
2. In Criminal Appeal No 69 of 2018 the said sentence was substituted with 20 years when the Judge found the charge proved was that provided under Section 8(3) & not 8(2) of the *Sexual Offences Act*. The Judge found that a severe sentence was called for in this case as the appellant who was PW 1's science teacher trained to a predator instead of a guardian to PW 1 & by so doing he breached the trust bestowed upon him by his employer. The trial judge therefore considered the appellant's mitigation as 1st Offender and circumstances of the case which were compounded by appellants attempt to conceal his wrong doing by attempting to procure abortion of the foetus with help of his co-accused.
3. From the judgment of the Judge it cannot be construed that she was not aware of the discretion of the court to reduce or enhance sentence under Section 354(3)(a)(iii) of the *Criminal Penal Code*. The Application is dismissed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF FEBRUARY, 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE



In the presence of:

Ogwel – Court Asst.

Mr. Ngiri for State

Applicant – Present in person

Hon. Lady Justice A. Ong’ino J

28/02/2023

