



**Kurgat v Republic (Miscellaneous Criminal Application  
E001 of 2022) [2023] KEHC 2599 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2599 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2022**

**HK CHEMITEI, J**

**MARCH 30, 2023**

**BETWEEN**

**JOHN KURGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was convicted for the offence of defilement and or incest and sentence to serve 30 years' imprisonment. His appeal to this court and the court of appeal were dismissed. He has been in custody since September 2007.
2. In his application for re-sentencing pursuant to the window of opportunity granted vide the famous Muruatetu judgement from the Supreme Court of Kenya, and the other several decisions by this court and the Court of Appeal regarding mandatory sentences, the applicant has sought to try his luck. It is his luck because the issue of sentencing is discretionary and the sections of the law that convicted the applicant are still intact within our statutes.
3. The applicant submitted that he has since reformed and has undergone various trade tests while in prison as per testimonials in his affidavit. He said that he was remorseful and he prays for a second chance in his life.
4. The applicant attached a copy of the letter from the officer in charge of Eldoret prison showing that he has been of good conduct and has trained in paint work and decoration among others. In short he had undergone rehabilitation.
5. The learned state counsel opposed the application arguing that the trial court had handed the right punishment to the applicant and therefore he ought to serve the same to the fullest. He said that the court ought to take into account the circumstances of the matter and the relationship between the applicant and the complainant.



6. Having heard the parties and going through the submissions it is evidently clear that the applicant's door was closed when the Court of Appeal dismissed his appeal. The only opportunity is now.
7. It is also true that the sentence meted against him was commensurate to the offence. Nonetheless the same was mandatory and by that time the current jurisprudence had not been developed. It is thus in order for the applicant to have filed this application.
8. In *Daniel Kipkosgei Letting v Republic* [2021] eKLR this court pronounced itself as follows; "With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be Page 12 of 19 commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. In this regard we think that the complaint that the sentence imposed was harsh and excessive is valid though it was the only sentence available then. We are therefore inclined to interfere with it. We therefore set aside the sentence of life imprisonment imposed on the appellant. Having considered the mitigation proffered by the appellant on record the sentence that commends to us is 25 years imprisonment."
9. Consequently, it is the believe of this court that the almost 16 years the applicant has been in custody has taught him a lifelong lesson. That period is not that short and probably he must or should have reformed. The evidence of what he has been doing while in custody and the recommendation from the prison authorities cannot be wished away.
10. In essence this court is of the consideration that he ought to be granted a second chance to make amends in his life noting that the applicant born in 1962 was now 61 years old or thereabouts.
11. In the premises, the sentence of Thirty (30) years is hereby varied and the appellant is set free unless lawfully held and placed under a Three (3) years' probation period at the relevant probation office from the date herein.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 30<sup>TH</sup> DAY OF MARCH 2023.**

**H. K. CHEMITEI.**

**JUDGE**

