



REPUBLIC OF KENYA



**Lusike v Republic (Criminal Petition E001 of 2022)
[2023] KEHC 2758 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION E001 OF 2022
WM MUSYOKA, J
MARCH 24, 2023**

BETWEEN

SAMMY LUSIKE PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. On June 24, 2022, I delivered a ruling herein where I indicated that there had been a new development with regard to offences defined under the [Sexual Offences Act](#), No. 3 of 2006, with respect to sentencing where mandatory sentences are concerned. The High Court, in [Philip Mueke Maingi & others vs. Director of Public Prosecutions & another](#) Machakos HCPet. No. E017 of 2021 (Odunga, J), on May 17, 2022, had given directions, with respect to mandatory sentences for sexual offences, akin to those given in [Francis Karioko Muruatetu & another v Republic](#) [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ).
2. The petitioner herein had been convicted of such offences, and I called for the trial court file in Butere PMCCRC No. 315 of 2010, as well as the appellate file in Kakamega HCCRA No. 107 of 2010, to enable me exercise discretion in the matter in the manner ordered or directed in [Philip Mueke Maingi & others vs. Director of Public Prosecutions & another](#) Machakos HCPet. No. E017 of 2021 (Odunga, J).
3. The said records were called for, and have been made available. I have perused both files. The accused had been charged under section 8(1)(3) of the [Sexual Offences Act](#). He pleaded guilty, and was sentenced to the minimum sentence provided for under section 8(3) of the [Sexual Offences Act](#), 20 years imprisonment. The court stated that it had considered his mitigation, and the fact that he had pleaded guilty.
4. The trial court did not state that the sentence was mandatory, and that its hands were tied, and it could not, in the circumstances, consider alternative sentences. The age of the petitioner did not arise, it is



not apparent from the record. However, given that he was a first offender, and had pleaded guilty, the trial court could have awarded a more lenient sentence, were its hands not tied at the time. His appeal, in Kakamega HCCRA No. 107 of 2010, was summarily rejected, on June 23, 2010, no doubt for the same reasons.

5. Under *Philip Mueke Maingi & others vs. Director of Public Prosecutions & another* Machakos HCPet. No. E017 of 2021 (Odunga, J), the sentence can be revisited and reviewed. The conviction was on May 4, 2010. If the petitioner is still serving the same, he would have done 12 years and ten months by now. That would be more than adequate for a first offender who had pleaded guilty, who should have been sentenced to not more than 5 years, if discretion were available then. Consequently, I shall set aside the sentence imposed on May 4, 2010, and substitute it with an order that he serves the period so far served. The result shall be that he shall be set free forthwith, unless he is otherwise lawfully held.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 24th DAY OF March 2023

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Sammy Lusike, the petitioner, in person.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

