



**Katu v Republic (Miscellaneous Criminal Application  
E155 of 2022) [2023] KEHC 19046 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 19046 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E155 OF 2022**

**A. ONG'INJO, J**

**MAY 31, 2023**

**BETWEEN**

**EZEKIEL MUJOMBA KATU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Application**

1. The applicant Ezekiel Mujomba Katu was charged in Wundanyi Senior Resident Magistrate's Court Criminal Case No. 381 of 2012 with the offence of defilement contrary to Section 8 (1) (2) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars of the offence were that Ezekiel Mujomba Katu on 25<sup>th</sup> August 2012 in Mwatate location within Taita Taveta County intentionally caused his penis to penetrate the vagina of FM a girl aged 9 years.
2. In the alternative charge, the applicant Ezekiel Mujomba Katu committed an indecent act with a child contrary to Section 11 (1) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars of the offence were that Ezekiel Mujomba Katu on 25<sup>th</sup> August 2012 in Mwatate location within Taita Taveta County intentionally touched the vagina of FM a child aged 9 years with his penis.
3. The trial court found the applicant guilty of the offence of defilement, convicted him and sentenced him to serve life imprisonment. The trial court further ordered the accused to compensate the complainant Kshs. 100,000 as provided for under Section 171 of the Criminal Procedure Code which was to be recovered from the cash bail deposited in court.
4. The applicant being dissatisfied with the conviction and sentence appealed in the High Court of Kenya at Mombasa Criminal Appeal No. 52 of 2014 where the conviction and sentence were affirmed by the court. However, the order issued by the learned trial magistrate that PW1 was to be compensated Kshs. 100,000 from the cash bail that the appellant had deposited in court was not justified at all, therefore set



aside. Thereafter, the applicant appealed the High Court decision at the Court of Appeal Malindi in Criminal Appeal No. 37 of 2017 which found that the appeal had no merit and the same was dismissed in its entirety.

5. Vide Notice of Motion Application filed on 17<sup>th</sup> February 2023 together with Supporting Affidavit sworn by the Applicant, he now seeks for review of the life imprisonment sentence and that the court grants a fair definite sentence proportionate to the offence committed.
6. The Applicant in submitting gave mitigating circumstances that he is a mining prospector of gemstones and he is needed by his community for discovery of new mining sites, that the two families have since reconciled, that his aged parents and siblings with different challenges need his assistance, and that he desires to proceed with his education at Chuka University.
7. In consideration that a life imprisonment sentence is infinite, the court has discretion to consider mitigating circumstances of the applicant and the prisons need to be certain how long they are going to hold him. Determinate sentences meet the objectives of Sentencing Policy Guidelines because of their certainty. In *Baragoi Rotiken v Republic* [2022] eKLR it was held that severe sentence such as life imprisonment is applied in appropriate circumstances and in accordance with *the Constitution* or other laws on sentencing. Further, the position on determinate sentence was held by Hon. Lady Justice Njoki Mwangi in *Musinda Mahupa v Republic* (2020) eKLR where a life imprisonment sentence was substituted with a determinate sentence.
8. In conclusion, this court finds that the application has merit and is allowed. The Applicant's life imprisonment sentence is reviewed to 25 years imprisonment, and in consideration of the proviso to Section 333(2) of the *Criminal Procedure Code*, the sentence to start running from 2.11.2012. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 31ST DAY OF MAY 2023**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

**Ogwel- Court Assistant**

Mr. Ngiri for the Respondent

Applicant present in person

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

