



**Omanyo v Republic (Criminal Petition E015 of 2023)
[2023] KEHC 25766 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION E015 OF 2023
DO OGEMBO, J
NOVEMBER 23, 2023**

BETWEEN

STEPHEN ODUOR OMANYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Stephen Oduor Omanyo, has applied to this court for sentence re-hearing. The application, brought by way of a Notice of motion is dated 16/3/2023 and filed on 23/3/2023. It is supported by the Affidavit of the applicant sworn on 11/3/2023. In the said Affidavit, the applicant has deponed that he was convicted and sentenced to life imprisonment for the offence of defilement contrary to **Section 8(1) of the *Sexual Offences Act, in Ukwalu PM's court Criminal Case 145 of 2014***. That his appeal at the High Court, Siaya, was dismissed and both the conviction and sentence were upheld. He has urged this court to review his sentence in view of the fact that minimum sentences have been declared to be unconstitutional.
2. The applicant has filed submissions herein in which he has raised various factors of mitigation including that he is remorseful, that he has gone through rehabilitation and that the life imprisonment denies him the right to remission.
3. The Prosecution has opposed this application on the basis that this court already dealt with this matter. Prosecution urged that this appeal be dismissed.
4. I have considered this application and the submissions made by both sides. I have also perused the record of proceedings relating to this matter.



5. The applicant was convicted and sentenced to life imprisonment for the offence of defilement contrary to **Section 8(1) (2) of the Sexual Offences Act**. The said section under which the applicant was sentenced provides;

“A person who commits an offence of defilement with a child aged 11 years and less shall upon conviction be sentenced to imprisonment for life.”

6. The sentence of the applicant was made by the lower court on 4/3/2015. The record shows that whereas the applicant was offered the opportunity to mitigate, he offered none. The court proceeded to mete out the then minimum mandatory sentence.

7. On appeal, the Honourable Judge in sentencing the applicant, noted;

“Section 8(1)(2) of the Sexual Offences Act provides for mandatory life sentence. I therefore confirm the appellant was rightly sentenced to serve life imprisonment.... I uphold the conviction and confirm the life sentence imposed by the trial court.”

8. This Judgment of the court was delivered on 8/6/2016. This was way before the decision in Supreme Court ***Petition Nos. 15 and 16 of 2019***, the ***Muruatetu*** case in which the Supreme Court declared mandatory sentences as unconstitutional.

9. In this case, the applicant did not offer any mitigation in view of the mandatory nature of the sentence for the offence he was convicted of. The law has since changed. Mandatory sentences are no longer constitutional.

10. It is on this basis that this application of the applicant for sentence re-hearing carries weight. The applicant has now submitted his mitigation including: -

- i. That he is remorseful.
- ii. That he has been rehabilitated.
- iii. That he pleads for a definite sentence.

11. I have considered the mitigation of the applicant. I have also considered the nature of the offence that the applicant was convicted of. I am convinced that the applicant deserves a stiff custodial sentences of a definite period.

12. I accordingly allow the applicant’s application and revise and set aside the life sentence meted out on the applicant. I order that the applicant shall serve 30 years imprisonment. This sentence shall run from 25-3-2014 the date the applicant was first arraigned in court.

Orders accordingly.

D.O. OGEMBO

JUDGE

Ruling read out in Open court in the presence of the applicant (Kisumu Maximum) and Ms. Mumu for State.

D.O. OGEMBO

JUDGE

