



REPUBLIC OF KENYA



**Anekeya v Republic (Criminal Revision E031 of 2022)
[2022] KEHC 11026 (KLR) (Crim) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E031 OF 2022
JM BWONWONG'A, J
MAY 23, 2022**

BETWEEN

MESHACK ANEKEYA APPLICANT

AND

REPUBLIC RESPONDENT

(Being revision from the order of Hon. Ong'oinjo, CM, dated 24/06/2021 in Kibera Chief Magistrate's Court in Criminal Case No. 55 of 2015 Republic v Meshack Anekeya)

RULING

1. The applicant under certificate of urgency has applied for revision of his sentence of four years imprisonment in respect of indecent assault contrary to section 11 (1) of the [Sexual Offences Act](#) No. 3 of 2006.
2. In his supporting affidavit the applicant has majorly deposed as follows. He was a first offender. He has also deposed that his mitigation was not considered. He has further deposed that he is 30 years old and that he has been in custody for 8 months.
3. Furthermore, the applicant has deposed that he has reformed and rehabilitated while in prison and has urged the court to impose upon him a non-custodial sentence.
4. Finally, the applicant has deposed that his wife possesses little formal education and has no skills to sustain the daily needs of his entire family.
5. I declined to hear counsel for the respondent as this was a simple matter for revision.
6. I have considered the affidavit of the applicant. I find that in these class of offences the Supreme Court in [Francis Karioko Muruatetu & another v. Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#)



[2021] e-KLR, ruled that the court has no discretion to impose any sentence. In other words, it has to impose the mandatory minimum prescribed sentence. In that regard that court pronounced itself as follows:

“(15) To clear the confusion that exists with regard to the mandatory death sentence in offences other than murder, we direct in respect of other capital offences such as treason under section 40 (3), robbery with violence under section 296 (2), and attempted robbery with violence under section 297 (2) of the *Penal Code*, that a challenge on the constitutional validity of the mandatory death penalty in such cases should be properly filed, presented, and fully argued before the High Court and escalated to the Court of Appeal, if necessary, at which a similar outcome as that in this case may be reached. *Muruatetu* as it now stands cannot directly be applicable to those cases.”

7. In the premises, the application fails and is hereby dismissed in its entirety.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDE VIDEO CONFERENCE THIS 23RD DAY OF MAY 2022.

J M BWONWONG'A

JUDGE

In the presence of: -

Mr. Kinyua court assistant

The appellant in person

Ms Oduor for the Respondent

