



**ENN v Republic (Miscellaneous Criminal Application E186 of 2022)
[2022] KEHC 16402 (KLR) (22 November 2022) (Order)**

Neutral citation: [2022] KEHC 16402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E186 OF 2022**

A. ONG'INJO, J

NOVEMBER 22, 2022

BETWEEN

ENN APPLICANT

AND

REPUBLIC RESPONDENT

ORDER

1. The applicant herein was charged and convicted in Nakuru CMC CR Case No 168 of 2012 for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No 3 of 2006. He was sentenced to serve life imprisonment.
2. On appeal in Nakuru HC CR A No 270 of 2014 the court found that evidence adduced fitted the offence of incest contrary to section 20(1) of the *Sexual Offence Act*. The conviction was therefore substituted to that for offence of incest and sentence substituted to 30 years imprisonment.
3. The applicant prays for review of the term of imprisonment on account of holding in Misc Application No E014 of 2021 at Narok *Baragoi Rotikin vs Republic* (2022) eKLR where Justice FM Gukonyo stated:-

“...whereas the applicant should pay for his crime, and act as deterrent for such debauchery, I should also give the applicant to be re-integrated back into society and be a productive citizen. Life sentence may not achieve these purposes accordingly; I set aside the life sentence and in lieu thereof sentence him to 25 years imprisonment”.

4. The applicant argued that emerging inresprudence is a clear testimony that the courts have realized their rightful position particularly at the sentencing stage that they are clothed with jurisdictional discretion to impose these sentences that are proportionate to the level of criminal culpability of offenders in matters tried under the penal laws which are worded in mandatory terms.



5. I have tried to search for the Appeal no 270 of 2014 in Kenya Law in vain and the copy of judgment in the said appeal is incomplete and is not certified. The proceedings in the trial court are also missing and the best that this court can do is to have this application transferred to Nakuru where matter originated for ease of reference to the proceedings of the trial court which are most likely in the appeal file for determination.
6. The Deputy Registrar in Nakuru will then be able to take necessary action.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY OF NOVEMBER, 2022

HON. LADY JUSTICE A. ONG'INJO

JUDGE

