



REPUBLIC OF KENYA



**Kedeke v Republic (Criminal Petition 99 of 2020)
[2022] KEHC 16812 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION 99 OF 2020
RN NYAKUNDI, J
DECEMBER 23, 2022**

BETWEEN

DANCAN SERENDE KEDEKE PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner approached this court *vide* a notice of motion filed on December 8, 2022 seeking the following orders;
 1. That the petitioner is seeking for sentence review in accordance to article 50(2) (p) (q) of the [constitution of Kenya 2010](#).
 2. That the application be certified urgent and service thereof be dispensed with it to be heard in the first instance.
 3. That the petitioner has been in prison for a long period of time.
 4. The petitioner begs to be present during hearing thereof.
2. The petitioner was charged with the offence of defilement contrary to section 8 (1) (2) of the [Sexual Offence Act](#) No.3 of 2006. Upon conclusion of the trial, the petitioner was sentenced to life imprisonment and upon appeal, his appeal was dismissed.
3. The application is premised on the grounds set out in the application and the mitigation. The applicant's case is that he is seeking orders for review of sentence as under section 362,364 (1) & 365 of the [CPC](#) Cap 75 laws of Kenya in reliance to article 27 (1) (2) (4),22(1), 23(1), 25c, 50(1) (2) and 51(1) (2) of the constitution of Kenya 2010 among other enabling laws. Further that he is seeking orders for review of sentence u/s 39(2) of [SOA](#) No 3 of 2006 relying on the supreme court decision in the Muruatetu case.



4. In his mitigation he states that he is remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency. Further, that having been in prison for over 12 years, he is a young man and prays to be re-constituted in the society to serve as a role model and a teacher/mentor to others of similar behaviour.

Issues For Determination

5. There is only one issue pending for determination, and that is whether the petitioner's sentence should be reviewed. Whereas I note that the petitioner relies on the findings of the Muruatetu case, the same is inapplicable as per the directions of the supreme court in the same case. The Supreme Court's directions in [Muruatetu 2](#) were as follows;
 - (14) It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution. It bears restating that it was a decision involving the two petitioners who approached the court for specific reliefs. The ultimate determination was confined to the issues presented by the petitioners, and as framed by the court.
 - (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.”
6. The court has considered the aggravating circumstances around the offence committed, and the mitigation of the petitioner. The court has also considered the emerging jurisprudence from the most recent decision of the Court of Appeal in Criminal Appeal No 84 of 2015 – [Joshua Gichuki Mwangi v Republic](#) where the court found that mandatory maximum sentences under the [sexual offences act](#) are unconstitutional.
7. In the premises, I hereby set aside the life sentence and substitute the same with a sentence of 30 years from the date of conviction and sentence recorded to be on the February 10, 2009. With this order an amendment of the committal of warrant of the petitioner be effected forthwith.

DATED, SIGNED AND DELIVERED VIA EMAIL ELDORET THIS 23TH DAY OF DECEMBER, 2022

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R. NYAKUNDI
JUDGE

