



**Kairu v Republic (Criminal Miscellaneous Application  
046 of 2022) [2025] KEHC 3200 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 3200 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL MISCELLANEOUS APPLICATION 046 OF 2022**

**LN MUTENDE, J  
JANUARY 21, 2025**

**BETWEEN**

**SAULO NG'ANG'A KAIRU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Saulo Ng'ang'a Kairu, the Applicant was charged, convicted and sentenced for the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. He proffered an appeal to the High Court which was dismissed in its entirety. (See HCCRA No. 146 of 2017). Being satisfied with the decision, he did not appeal to the Court of Appeal.
2. Through an application dated 3<sup>rd</sup> August, 2022 he urges the court to review the sentence in Nyahururu Magistrate's Cr. Case No. 35 of 2015, where he was sentenced to serve life imprisonment. That under the provisions of the *Constitution of Kenya*, 2010 and *Practice and Procedure Rules* 2010 the court has power to hear and determine infringements of fundamental rights and award remedies. The Applicant also seeks invocation of Section 333(2) of the *Criminal Procedure Code*.
3. The Applicant relied on *Mueke Maingi & 5 Others v DPP* Petition No. E017 of 2021 where the High Court declared that court's discretion in sentencing should not be fettered by mandatory minimum sentencing provisions.
4. I have considered averments by the Applicant. It is worth noting that this matter was considered and determined by the High Court, which is of a concurrent jurisdiction with this court which divests this court of the authority to re-open the case. The High Court did issue a final order on sentence hence it's functus officio.



5. Additionally, in *Republic v Mwangi & Others* Petition No. E018 of 2023 (2024) KESC 34(KLR) the Supreme Court stated that the decision of Muruatetu didn't invalidate mandatory sentence, minimum sentence in the *Penal Code*, the *Sexual Offences Act* or in any other statutes.
6. From the foregoing the application by the Applicant is without merit. Accordingly, it is dismissed.
7. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF JANUARY, 2025.**

**L.N. MUTENDE**

**JUDGE**

