



**Muya v Republic (Miscellaneous Application E302 of 2022)  
[2025] KEHC 3191 (KLR) (Crim) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 3191 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS APPLICATION E302 OF 2022  
CJ KENDAGOR, J  
JANUARY 20, 2025**

**BETWEEN**

**GABRIEL MUYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from decisions in Court of Appeal at Nairobi Criminal Appeal  
No. 108 of 2019, High Court at Nairobi Criminal Appeal No. 82 of  
2013, Kiambu Chief Magistrate Criminal Case No. 1349 of 2010)*

**RULING**

1. The Applicant has filed the instant application seeking orders on resentencing. The application is supported by an affidavit dated 25<sup>th</sup> October, 2022 sworn by the Applicant.
2. The Applicant was charged, convicted and sentenced to life imprisonment in the Chief Magistrates Court Kiambu Criminal case no. 1349 of 2010. The conviction was on two counts of the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the *Sexual Offences Act*. The particulars of the first count was that on the 15<sup>th</sup> August, 2010 at about 9.30 p.m in Kiambu District, within Central Province, the Applicant unlawfully and intentionally committed an act which caused penetration of his genital organ (penis) into the genital organ (vagina) of ANB, a child aged eleven (11) years. The particulars of the second count were that on the same day and in the same place, the Applicant unlawfully and intentionally committed an act which caused penetration of his genital organ (penis) into the genital organ (vagina) of FWK, a child aged eight (8) years.
3. His appeal to the High Court in Nairobi H.C Criminal Appeal No. 82 of 2013 (Gabriel Muya v Republic [2016] eKLR) was dismissed. Similarly, his appeal to the Court of Appeal in Nairobi Court



of Appeal Criminal Appeal No. 108 of 2019 (Gabriel Muya v Republic [2020] KECA 648 (KLR) was also dismissed, and the sentence was affirmed.

4. The Applicant argues that the time he has already spent in prison since 15<sup>th</sup> August, 2010, is sufficient for his rehabilitation. He has asked the Court to take this into account as a mitigating factor. He argues that his life sentence was imposed as a mandatory minimum sentence and that, therefore, he is entitled to resentencing based on legal precedents regarding such sentences.

5. The Court of Appeal in deciding the appeal he lodged against the High Court decision held as follows;

“(24) On the last issue of sentence, the appellant pleaded for leniency, stating that he regretted the events of that material day and had since gone through serious rehabilitation. He urged us to exercise our discretion and set aside the mandatory life sentence and substitute it with a more lenient sentence. Following the Supreme Court decision in Francis Karioko Muruatetu & another vs. Republic [2017] eKLR, this Court has had several opportunities to reduce the mandatory life sentences under the Section 8(1) of the Sexual Offences Act to more lenient sentences depending on the circumstances of each case. (See Jared Kioita Injiri vs. Republic [2019] eKLR ; Robert Simiyu Wafula & another vs. Republic [2019] eKLR and B.W vs. Republic [2019] eKLR).”

6. The Court of Appeal went on to state as follows;

“(25) We recognize that in Muruatetu Case, the Supreme Court recommended sentencing guidelines that looks into the possibility of reform and social re-adaptation during sentence re-hearing. This suggests that where an appellant has been in custody for a considerable period of time, courts ought to inform itself as to whether the appellant is fit for release back into society. In the instant appeal, however, the circumstances surrounding this matter are disturbing; so are the gravity of the appellant’s acts of 15<sup>th</sup> August, 2010 when he lured helpless children to his house under the guise of helping them and he used threats by suggesting he would throw them to the ferocious dogs if they cried. Then he violently defiled the complainants’ in turns throughout the night. We find the appellant acted intentionally and sadistically. This kind of prolonged physical, psychological and emotional torture must have caused irreparable damage to the children which might affect them for the rest of their lives. The appellant merely posed as a good Samaritan but he is a sexual predator who deserves to be kept away from the society. For those reasons we are not persuaded to reduce the life sentence meted out by the two courts below even after bringing to bear the sentencing guidelines under the Muruatetu Case.”

(emphasis mine)

7. The Court of Appeal decision shows significant attention to the examination of the sentence that was imposed in this particular case. In this application, the applicant has not indicated that his mitigation was not considered. The Court of Appeal considered the mitigation and circumstances of the case.

8. In light of the above, should this court decide to reconsider the sentence, it would undermine the established hierarchy of the judicial system. Since the last Court to sentence the convict was the Court of Appeal, the application for resentencing should be submitted to the Court of Appeal. he High



Court or any Subordinate Court can only address the matter if there is a specific order remitting the case for a re-sentencing hearing.

9. Under the Judiciary Sentencing Policy Guidelines, 2023, which makes provision for resentencing in paragraph 4.8.18, jurisdiction to hear the application for resentencing in this matter lies with the Court of Appeal.
10. The application is dismissed.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 20<sup>TH</sup> DAY OF JANUARY, 2025.**

.....

**C. KENDAGOR  
JUDGE**

In the presence of:

Court Assistant: Beryl

Applicant present

Ms. Bosibori ODPP, for Respondent

