



REPUBLIC OF KENYA



KENYA LAW
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**Areme v Republic (Criminal Petition E010 of 2023)
[2025] KEHC 2914 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION E010 OF 2023
WM MUSYOKA, J
MARCH 14, 2025**

BETWEEN

ADRIANO OKIBIT AREME PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner herein had been convicted of defilement, contrary to section 8(1)(3) of the Sexual Offences Act, Cap 63A, Laws of Kenya, and sentenced to life imprisonment, in Busia CMCCRC No. 107 of 2008. He filed an appeal at the High Court, being Busia HCCRA No. 30 of 2009. His appeal was on conviction, and the conviction was upheld. Thereafter, he filed a further appeal, at the Court of Appeal, being Kisumu CACRA No. 48 of 2012, which was also dismissed.
2. The appellant did not file an appeal against the sentence, although there was an issue there, which neither of the appellate courts addressed. The charge had been brought under section 8(3), for defilement of a child between ages 12 and 15 years, which attracts a penalty of, upon conviction, imprisonment for a term of not less than 20 years. The complainant, in Busia CMCCRC No. 107 of 2008, was aged 9 years, and the charge should, therefore, have been brought under section 8(2), which covers victims of under 12 years, and prescribes life imprisonment as the mandatory penalty for the offence.
3. The charge was never amended, to bring it under section 8(2), but, upon conviction, the trial court did not impose the sentence based on section 8(3), which was the provision cited in the charge, but under section 8(2), when it imposed life imprisonment, as the punishment the petitioner was to serve, although it was not indicated that he was sentenced under section 8(2). Anyhow, given that it was proved that the minor was of tender years, the courts handling the matter did not raise it, although something ought to have been said about it, for purposes of the completeness of the record.



4. The petitioner has come before me, by the Motion, dated 18th August 2023, seeking review of sentence, premised on Article 50(2) of *the Constitution*, about being given the less severe or appropriate sentence. He also invokes Article 27 of *the Constitution*, on discrimination, and section 333(2) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya. He also cites *Maingi & 5 others vs. Director of Public Prosecutions & another* [2022] KEHC 13118 (KLR) (Odunga, J) and *Edwin Wachira & 9 others vs. Republic* Mombasa HC Petition No. 97 of 2021 (Mativo, J) (unreported).
5. The petitioner had the benefit of having his case heard on appeal, at both the High Court and at the Court of Appeal. The issues he now raises could have been raised at those levels, for both *the Constitution* of Kenya 2010 and the *Criminal Procedure Code* were in place, in 2011 and 2016, respectively. Am talking about the issues around discrimination, consideration of lesser punishments and the period spent in custody. The petitioner lost the opportunity to urge them then, and I shall not consider them now.
6. The principle, set in *Maingi & 5 others vs. Director of Public Prosecutions & another* [2022] KEHC 13118 (KLR) (Odunga, J) and *Edwin Wachira & 9 others vs. Republic* Mombasa HC Petition No. 97 of 2021 (Mativo, J)(unreported), that mandatory sentences in sexual offence cases, such as the one imposed in this case, were unconstitutional, for they took away discretion, is no longer good law, according to *Republic vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) (Koome, CJ, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), and the 2 decisions are now, therefore, no longer of application.
7. Perhaps, I can only consider 2 other cases, that were unaffected by the decision in *Republic vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae)* [2024] KESC 34 (KLR) (Koome, CJ, Ibrahim, Wanjala, Ndung'u & Lenaola, SCJJ), which I believe to be relevant for the purposes of determination of the instant matter. In *Julius Kitsao Manyeso vs. Republic* [2023] eKLR (Nyamweya, Lesiit & Odunga, JJA), the Court of Appeal declared life imprisonment, as a form of punishment, whether mandatory or permissive, unconstitutional; while *Evans Nyamari Ayako vs. Republic* Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA) declared that life imprisonment translated to 30 years.
8. Decisions of the Court of Appeal bind me, sitting, as I hereby do, as the High Court, and the courts subordinate to the High Court. The petitioner ought to benefit from the legal principles set out or the positions stated in the 2 decisions.
9. Consequently, I do hereby allow the Motion herein, dated 18th August 2023, along the lines of *Julius Kitsao Manyeso vs. Republic* [2023] eKLR (Nyamweya, Lesiit & Odunga, JJA) and *Evans Nyamari Ayako vs. Republic* Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA), with the consequence that the mandatory sentence of life imprisonment, imposed on the petitioner, by the trial court, is hereby set aside, and substituted with a sentence of imprisonment for a term of 30 years.
10. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 14TH DAY OF MARCH 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Adriano Okibit Areme, the petitioner, in person.



Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the respondent.

