



REPUBLIC OF KENYA



KENYA LAW
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**Oketch v Republic (Criminal Petition E011 of 2023)
[2025] KEHC 2916 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2916 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION E011 OF 2023
WM MUSYOKA, J
MARCH 14, 2025**

BETWEEN

FRED OKETCH PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner herein had been convicted of defilement, contrary to section 8(1)(4) of the *Sexual Offences Act*, Cap 63A, Laws of Kenya, and sentenced to serve 15 years imprisonment, in Busia CMCSOC No. 98 of 2019. It would appear that he did not file an appeal against his conviction and sentence.
2. The charge had been brought under section 8(4), for defilement of a child between ages 16 and 18 years, which attracts a penalty of, upon conviction, imprisonment for a term of not less than 15 years. The complainant, in Busia CMCSOC No. 98 of 2019, was aged 17 years.
3. The petitioner has come before me, by the Petition and Motion, filed on 5th September 2023, seeking reduction of sentence, premised on several provisions of the *Constitution*.
4. The High Court, 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), had declared that mandatory sentences in sexual offence cases, such as the one imposed in this case, were unconstitutional, for they took away discretion.
5. However, the Supreme Court has, 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), declared that those 2 decisions are not good law, and that the punishments prescribed in the *Sexual Offences Act* remain lawful.



6. Consequently, I would have no basis for revisiting the sentence imposed, for *Maingi & 5 others vs. Director of Public Prosecutions & another* [2022] KEHC 13118 (KLR) (Odunga, J) and *Edwin Wachira & 9 others v Republic* Mombasa HC Petition No. 97 of 2021 (Mativo, J)(unreported) are no longer available.
7. Decisions of the Supreme Court bind me, sitting, as I hereby do, as the High Court. I am obliged to bend to the legal position stated 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).
8. The petitioner should strive to benefit from the administrative reliefs of prerogative of mercy and remission, which are under the Executive, and which he can access through the prisons systems. Otherwise, as a court, the matter is out of my hands,
9. The Petition and the Motion are without merit, and I hereby dismiss them. 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. Fred Oketch, the petitioner, in person.

Advocates

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

