



**Ndege v Republic (Criminal Petition E033 of 2022)
[2025] KEHC 4879 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL PETITION E033 OF 2022
EM MURIITHI, J
APRIL 24, 2025**

BETWEEN

RICHARD MUNENE NDEGE APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. Following the recent decision in Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment) Neutral citation: [2025] KESC 16 (KLR) of 11/4/2025, the judgment in this Petition challenging the sentence of life imprisonment for the offence of defilement contrary to section 8(1) (2) of *Sexual Offences Act* must be arrested to permit the applicant to consider the effect of the Supreme Court decision on his application and to move the Court appropriately.
2. While considering the issue whether the Court of Appeal erred in law by substituting the life imprisonment sentence with 40 years sentence, held that the sentence of life imprisonment is lawful the Court and directed any challenge on the Constitutionality to be taken through the court process of the High Court and Court of Appeal, as follows:

“(1) Whether the Court of Appeal erred in law by substituting the life imprisonment sentence with 40 years sentence thereby usurping the legislative powers to define sentences.

67. Article 94 of the *Constitution* provides that legislative authority is derived from the people and, at the national level, is vested in and exercised by Parliament, while every court within the constitutional framework has the authority to determine the constitutionality of a statute. Article 165 (3)(b) grants the High Court original jurisdiction to determine the question whether a



right or fundamental freedom under the Bill of Rights has been denied, infringed, violated or threatened. The Court of Appeal, when acting within its appellate jurisdiction, is empowered to scrutinize and interpret the constitutionality or otherwise of a statute, the issue equally having been canvassed at the first instance before the High Court. The court's role with regard to the constitutionality of a statute is therefore confined to its interpretation and adjudication.

68. Courts cannot therefore extend their determination to rectifying or amending the statute in question, as this would contravene the doctrine of separation of powers, which delineates the functions of the judiciary, legislature, and executive. Courts must exercise caution when crafting remedies to avoid overstepping their judicial mandate and intruding upon legislative functions by prescribing or enacting amendments. When courts recognize the need for legislative intervention, it is both proper and imperative for them to recommend such measures to the appropriate authorities for adoption. As a Court we have invoked this remedy in various instances; in *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) we suggested the consideration of reforms over the recourse parties have upon the declaration of trust by the courts and how to actualize the same, especially regarding the aspect of shareholding. In *Malcolm Bell v Daniel Toroitich Arap Moi & Board of Governors Moi High School Kabarak* (Application 1 of 2013) [2013] KESC 23 (KLR) Hon. Justice Kaplana Rawal, DCJ in her concurring opinion made recommendations to amend Section 16 of the *Supreme Court Act*. In *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] KESC 53 (KLR) we urged CAK to set a timeline for the digital migration. In *National Bank of Kenya Limited v Anaj Warehousing Limited* (Petition No. 36 of 2014) [2015] KESC 4 (KLR) we suggested appropriate legislative action to be taken to address the gaps and inconsistencies apparent in the *Advocates Act*.

69. We therefore find no difficulty in finding that the Court of Appeal erred in law by substituting the life imprisonment sentence with a 40-year sentence, thereby usurping the legislative power to define sentences.”

3. The appellant is consequently given an opportunity to consider the directions of the Supreme Court as it affects his present petition and take necessary action by way of further and full submissions, or otherwise as he may be advised by his legal advisors.
4. Mention for directions on the Petition on 29/5/2025.

Order accordingly.

DATED AND DELIVERED THIS 24TH DAY OF APRIL 2025.



EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mamba for the DPP.

The Applicant in person.

