



**Francis v Republic (Miscellaneous Criminal Appeal
E011 of 2024) [2025] KEHC 6610 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6610 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
MISCELLANEOUS CRIMINAL APPEAL E011 OF 2024**

JN NJAGI, J

MAY 20, 2025

BETWEEN

CHARLES KALUME FRANCIS APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted by the lower court for the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve 20 years imprisonment. His appeal to the High Court on conviction and sentence was unsuccessful.
2. The applicant has now filed an application before this court seeking for review of sentence on the grounds that the trial court did not consider his mitigation when it sentenced him to the mandatory sentence of 20 years imprisonment. The applicant basis his application on the decision of Odunga J (as he then was) in Machakos High Court Constitution Petition No. E017 of 2021 where the learned judge held that:

“Those who were convicted of Sexual Offence and whose sentences were passed on the basis that the trial court has no discretion in imposing the mandatory sentences are at liberty to seek a review from the High Court.”
3. The applicant thus prays that this court be pleased to hear and receive his mitigation and proceed to grant the prayers sought herein.
4. The applicant also basis his application on Section 216 and 389 of the *Criminal Procedure Code* which provides that before passing sentence the court may receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.



5. The applicant mitigates that he was a first offender; that the prison administration has granted him some favourable progressive report in some technical education which will enable him to transform his life and become a role model in the society; that he has had positive interaction with his fellow inmates and prison authorities; that he is remorseful to the act convicted of and the circumstances of the commission of the offence and pleads for leniency and that he has gotten a lesson and is fully rehabilitated.
6. The application was opposed by the respondent on the ground that the applicant's appeal was rejected by the High Court. That coming back to the same court for re-sentencing is unprocedural. It was submitted that the applicant should have moved to the Court of Appeal if he was dissatisfied with the upholding of the sentence by the High Court.
7. I have considered the grounds in support of the application and the grounds in opposition thereto. The issue for determination is whether the application is merited.
8. It is not in dispute that the applicant appealed against the judgment of the lower court before the High Court. In dismissing the sentence of 20 years imprisonment imposed on the applicant by the lower court, Justice Githinji observed that:

“The sentence of 20 years imprisonment is legally correct. The court considered the relevant factors in arriving at it. Given the circumstances of the case, where the appellant took advantage of a minor relative he was living with to defile her to a point where he even impregnated her, the sentence is deserved.”
9. Considering that the applicant's appeal was handled by a court of equal jurisdiction as that of this court, it would be unprocedural to revisit the same judgment and hold that the sentence of 20 years was not deserved. That would amount to overturning the judgment of a court of equal jurisdiction.
10. The above notwithstanding, the Supreme Court in the case of Republic –v- Joshua Gichuki Mwangi (Respondent) & Initiative for Strategic Litigation in Africa & 3 others (Amicus Curie), Petition No.E018 of 2023 held that the principles enunciated in Francis Karioko Muruatetu & another – v- Republic Petition No15 and 16 of 2017 KESC KLR(14/12/2017) do not apply in mandatory sentences as set out in the *sexual offences Act*. Therefore that the minimum sentences are lawful. That being the case, this court has no power to impose any sentence less than the minimum sentence set under the *Sexual Offences Act*. In view of the Supreme Court decision the judgment of Odunga J. in Machakos Constitution Petition No.E017 of 2021 has no application in law.
11. In view of the foregoing, I find no merit in the application herein. Consequently, the application is dismissed.

DELIVERED, DATED AND SIGNED AT GARSIN THIS 20TH DAY OF MAY 2025.

J. N. NJAGI

JUDGE

In the presence of:

N/a.....for Appellant

Appellant appearing in person

Mr. Oluoch for Respondent

Appellant- present in person at G. K. Prison Malindi



