



REPUBLIC OF KENYA



KENYA LAW
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**Maiyo v Republic (Miscellaneous Application 77 of 2018)
[2025] KEHC 6524 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6524 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION 77 OF 2018
RN NYAKUNDI, J
MAY 23, 2025**

BETWEEN

JOSEPH KIPTUM MAIYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 3rd day of August 2018 seeking the following orders:
 - i. That may the honourable court be pleased to admit me on probation or community service order.
 - ii. That this honourable court may make any further or other orders as deem just, fair and appropriate to admit me on probationThe same is annexed by an Affidavit sworn by Joseph Kiptum Maiyo which States as follows:
Further it is supported by an affidavit sworn by Joseph Kiptum Maiyo which states as follows:
 - i. That we are Kenyan citizen adult male of sound of mind hence competent to swear this affidavit.
 - ii. That I was convicted and sentenced to serve 30 years imprisonment on 2/6/2004 in cr. case no. 858 of 2004
 - iii. That may the honourable court consider that I have served over a third of my sentence and I am enticed to the remaining 5 years on probation
 - iv. That we have undergone training in various courses offered in prison and acquired spiritual certificates and grade III, II, I in mechanics and wish to table during hearing



- v. That all I have deponed herein is true to the best of my knowledge information and belief.
2. The law is now settled in so far as sentencing of convicted offenders under the Section Offences Act is concerned. From the outset of the decision of the Supreme Court in Francis K Muruatetu vs R 2017 eKLR there was an impression created by the ration decidendi that mandatory minimum sentences in Kenya are unconstitutional. However, it is now clear from the same Apex court in the case of Republic v Joshua Gichuki Mwangi Petition No E018 of 2023 in which the court emphasized the distinction between mandatory sentences and minimum sentences. Further the court also held that although sentencing is an exercise of judicial discretion, it is Parliament and not the judiciary that sets the parameters of sentencing for each crime in the statute.
 3. This means therefore, the intention of the legislature should not override judicial discretion of a trial court. The question as to whether deterrence and retribution being the intended purpose, of minimum mandatory sentences, would achieve the objective of deterring the convicted offenders or other potential perpetrators of the crime is moot. Since the advent of the Muruatetu jurisprudence there has been a robust conversation among the levels of courts in our legal system as to whether the provisions of the *Sexual Offences Act* undermine the independence of the Judges by limiting there jurisdiction to exercise discretion within the parameters of individualization of cases.
 4. In so far as this case is concerned the Applicant has not met the threshold outlined in Section 362 & 364 of the *Criminal Procedure Code*. The Application is dismissed under Section 382 of the same Code.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 23RD DAY OF MAY 2025

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R. NYAKUNDI

JUDGE

