



REPUBLIC OF KENYA



**Muguannah v Republic (Miscellaneous Application E139 of 2024)
[2025] KEHC 8177 (KLR) (Crim) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 8177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E139 OF 2024
CJ KENDAGOR, J
MAY 15, 2025**

BETWEEN

LUCAS ODHIAMBO MUGUANNAH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a Ruling on the Notice of Motion dated 30th April, 2024 filed by the Applicant herein. It seeks the following orders;
 - i. Spent
 - ii. That the life imprisonment sentence imposed on the applicant is unduly harsh and fails to take into account the applicant's mitigating factors, and that an order for revision should be made considering the rehabilitation the applicant has undergone.
 - iii. Costs be exempted.
2. The background of the matter is that the Applicant was tried, convicted, and sentenced to life imprisonment for the offence of defilement contrary to Section 8 (1) as read with 8 (2) of the *Sexual Offences Act* in the Chief Magistrates Court Makadara Sexual Offences Case No. 4626 of 2012. The particulars of the offence were that on 7th July, 2012 at around 4.00 pm in [particulars withheld] within Nairobi County, the Applicant unlawfully and intentionally committed an act of penetration with his penis into the vagina of G.A. a girl aged 9 years.
3. He appealed against his conviction and sentence in the High Court of Kenya at Nairobi Criminal Appeal No. 44 of 2012, but the appeal was dismissed on 11th April, 2017.



4. He lodged a second appeal via the Court of Appeal at Nairobi Criminal Appeal No. 13 of 2021, and the Court of Appeal, in a judgment delivered on 7th July 2023, dismissed the appeal and upheld the conviction and sentence.
5. The Applicant has requested that the Court revise the sentence concerning his imprisonment, taking into account that he is of poor health, has no family, and that he has undergone rehabilitation for over 12 years during his time in custody.
6. The state opposed the application, arguing that the imposed sentence is both mandatory and lawful.
7. The Applicant was convicted under Section 8 (1) as read with 8 (2) of the [Sexual Offences Act](#) which provides as hereunder;
 - 8 (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
8. In the Court of Appeal matter, the Honourable Judges of Appeal held as follows:

“...The sentence imposed on the appellant is as prescribed under Section 8 (2) of the [Sexual Offences Act](#). It is a legal sentence and this court has no basis upon which to interfere with it.”
9. The Applicant had the opportunity to present his mitigation in the lower court. It is noteworthy that the child victim was only 9 years old; therefore, the sentence imposed was in accordance with Section 8 (2) of the law.
10. The Supreme Court of Kenya, in the case of Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (Petition E018 of 2023 [2024] KESC 34 (KLR) (12 July 2024) (Judgment), held that mandatory minimum sentences under the [Sexual Offences Act](#) remain valid as long as the relevant sections of the Act continue to hold legal standing.
11. The Applicant’s appeals have been heard and decided. This Court cannot exercise revisionary powers after the first and second appeals have been heard and determined, both of which upheld the conviction and sentence. The Court of Appeal, being a superior Court to the High Court, cannot be subject to revisionary powers by this Court.
12. Additionally, the sentence imposed is a mandatory sentence, and this Court has no jurisdiction to interfere with that sentence.
13. Even if the application were considered from the perspective of resentencing, it would still lack merit for the same reasons stated in this ruling.
14. The application is dismissed.
15. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this 15TH day of MAY, 2025.

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C. KENDAGOR
JUDGE



In the presence of:

Court Assistant: Beryl

Applicant present

Mr Chebii, ODPP for Respondent

