



**Omolo v Republic (Criminal Case E104 of 2024)
[2025] KEHC 6719 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E104 OF 2024
RN NYAKUNDI, J
MAY 26, 2025**

BETWEEN

JOSEPH OMOLO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 6th day of march 2024 seeking following orders:
 - i. That this matter be certified as urgent and be heard at the first instance
 - ii. That I am the applicant herein seeking for sentence revision in a case of defilement contrary to section 20(1) of the *sexual offences act* no. 3 of 2006 in criminal case number 11 of 2017 at Eldoret law courts where I was convicted and sentence to serve a life imprisonment sentence
 - iii. That under the provisions of the *constitution* of Kenya 2010 under article 23(1) and (3) and practice and procedure rules 2010 this court has power to hear and determine infringements of fundamental rights and award remedies
 - iv. That the court of appeal Kisumu in *Nyamari Ayako vs republic* Carinal appeal no. 22 of 2018 eKLR held that the life sentence offends articles 27 and 28 of the *constitution* 2010 thus unconstitutional
 - v. That further grounds shall be adduced in the sworn supporting affidavit of among other grounds to be adduced during the hearing of this application which application is made on the following grounds:
 - a. That the petitioner herein appealed to the high court at Kitale vide criminal appeal no. 54 of 2017 and the same was dismissed



- b. That the petitioner did appeal to the court of appeal but has not gotten any response to date hence this Petition
 - c. That the court of appeal in Kisumu in Evans Nyamari Ayako vs republic Criminal Appeal No. 22 of 2018 eKLR held that life sentence offends articles 27 and 28 of the Kenya constitution 2010 unconstitutional
 - d. That I pray to be present during the hearing of this petition
2. The *Sexual offences Act* prescribes life sentences as mandatory for the offences of defilement under Section 8(1) as read with Section 8 (2) of the Act. One of the primary ways a convicted offender may be released before he or she has served the entirety of his or her sentence is through the prerogative of mercy under Art. 133 of the *constitution*. Therefore, in Kenya life imprisonment is available for the most serious offences including murder, manslaughter, defilement, specifically a child below 11 years and certain serious drug trafficking offences. Life imprisonment means the whole term of a person is natural life. In advent of *Muruatetu* 2017 eKLR many superior courts interpreted and construed the decision as being applicable to such other sentences under the *Sexual offences Act* and it occasioned a review of life sentence and having it substituted to a determinable period. As a result of these decisions the Supreme Court in *Republic vs Joshua Gichuki Mwangi* Petition No. E018/2023 and *Republic vs Julius Kitsao* SC Petition No E003 of 2024 affirmed that life imprisonment is lawful, constitutional, and any convict serving that sentence cannot challenge it for being unconstitutional. That is the basis upon this application is based. There are no compelling or exceptional circumstances to warrant a review of the sentence imposed by the trial court. The Application is dismissed under Section 383 of the *Criminal Procedure Code*.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 26TH DAY OF MAY, 2025

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R. NYAKUNDI
JUDGE

