



**Republic v Wanyoike (Petition E031 of 2024)
[2025] KEHC 6800 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6800 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E031 OF 2024**

**A MSHILA, J
MAY 16, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL MBURU WANYOIKE PETITIONER

JUDGMENT

1. This is an application for sentence review through a constitutional petition in which the Petitioner seeks this court to give him another chance in life. The Petitioner was tried at Kiambu Chief Magistrates Court, Criminal Case No.3035 of 2012.
2. He was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. He was convicted and sentenced to life. Dissatisfied with both the conviction and the sentence, the Petitioner appealed in the High Court vide Criminal Appeal No. 157 of 2013 at Nairobi. The appeal was dismissed on 24th February, 2016. He also appealed to the Court of Appeal Criminal Appeal No. 18 of 2017 at Nairobi which appeal was also dismissed and the life sentence was upheld.
3. The Petitioner filed written submissions stating that life sentence does not respect or protect inherent dignity of a person contrary to Article 28 of *the Constitution*. Life sentence inflicts psychological torture contrary to Article 29(d) of *the Constitution*. He relied on *Thomas Mwambu Wenyi v Republic* (2017)eKLR.

Issues For Determination.

4. The sole issue for determination is whether the court should review the Petitioners life sentence.



Analysis.

5. The applicable law is found under Article 165(3) of *the Constitution* which gives this Court the jurisdiction to determine cases where the rights and fundamental freedoms of citizens under the Bill of Rights have been violated. This jurisdiction in respect of resentencing is demonstrated in prevailing jurisprudence. This Petition is therefore rightly before this court.
6. In *Ngugi v Republic* (Miscellaneous Criminal Application E025 of 2021) [2024] KEHC 1842 (KLR) (26 February 2024) (Judgment) it was observed that the jurisprudence emanating from the Court of Appeal is that a court may fix a definite period of imprisonment where a person has been imprisoned for life or the law prescribes life sentence.
7. The appropriate sentence depends on the facts and the circumstances of the case. The Judiciary Sentencing Policy Guidelines lists the relevant factors in sentencing at page 15 paragraph 4.1 including the gravity of the offence, the threat of violence against the victim, the nature and type of weapon used by the Applicant to inflict harm.
8. In the instant case, PW1 the grandmother of the Complainant had sent her together with PW3 and PW4 to sell bananas on the road; the Petitioner approached them and purchased bananas from them and he requested them to follow him to his house where he would give them the money; at his house he gave PW3 and PW4 Kshs.20/- and asked them to go look for change; he then grabbed the complainant put her on a bed and sexually assaulted her. When PW3 and PW4 went back to the house they were unable to access the house as they were unable to open the gate they then went home and reported the incident to their mother; They led her to the Petitioner's house where he was found with the complainant who was on the bed without her underpants and she had bruises on her neck and had white discharge on her genitalia. PW1 with the assistance of the members of the public arrested the Petitioner.
9. The circumstances of this case and the mitigation rendered by the Petitioner have been considered. The Petitioner submitted that he was remorseful and has undergone rehabilitation. He has learnt to live as a peace-loving citizen with necessary skills to earn him a living. He was a first offender at the time of committing the offence. The record indicates that he was sentenced to death because that is what is provided by the law. The sentence was later commuted to a life sentence by the President of the Republic of Kenya
10. Life imprisonment should not mean the natural life of a convict. Such an indefinite sentence contravenes the right to human dignity and the right not to be subjected to inhuman and degrading treatment.
11. The imposition of an indeterminate life sentence, still denies a convict the opportunity to be heard in mitigation and also denies them the benefit of parole whilst those facing lesser sentences are allowed to be heard in mitigation and are admitted to parole. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of *the Constitution*.
12. For those reasons this court is satisfied that the Petition has merit and may be allowed.

Findings And Determination.

13. In light of the above reasoning this court makes the following findings and determinations;
 - i. This Court finds the Petition has merit and it is hereby allowed.
 - ii. The file be remitted back to Kiambu Law Courts for resentencing.



Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 16TH DAY OF MAY, 2025.

A. MSHILA

JUDGE

