



**Tindu v Republic (Constitutional Petition E004 of 2024)
[2025] KEHC 6349 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6349 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CONSTITUTIONAL PETITION E004 OF 2024**

JN NJAGI, J

MAY 16, 2025

BETWEEN

JOHN MWALUSI TINDU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner has filed an undated petition seeking for a declaration that the mandatory minimum sentence as provided under Section 8(1) agreed with Section 8(2) and 11(1) of the *Sexual Offences Act* No. 3 of 2006 are unconstitutional and inconsistent with or in contravention of Article 50(2), 25, 27, 28 and 29 of *the Constitution* of Kenya 2010.
2. He further seeks that an order be made that the life sentence imposed on him without considering his mitigation violated his right to fair trial. That an order be made for an alternative sentence other than the custodial sentence so as to enable him attend to his failing health and his family.
3. The petition in support of the petition argues that the *Sexual offences Act* does not conform to the 2010 constitution and needs to be altered with adaptation to rhyme with Constitution of Kenya 2010. The petitioner made reliance on the case of Philip Mueke & 5 others – v- DPP, Petition No. E017 of 2021 delivered on 17/5/2022 by Hon. G. V. Odunga in Machakos 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.”
4. The respondent opposed the application on the ground that the petitioner appealed his conviction to the High Court and the Court of Appeal and the appeals were dismissed. That he filed a new application at the High Court which was dismissed by Justice Nyakundi. He filed another review



application before the High Court again and it was dismissed by Justice Githinji. He has now filed another application similar to those already dismissed. The Respondent urged the court to dismiss the petition.

5. I have perused the court record. The record shows that the petitioner filed a constitutional Petition No. 03 of 2018 seeking that his conviction and sentence be considered pursuant to Article 50(6)(a) (b) of *the Constitution* on the ground of new and compelling evidence becoming available. The petition was dismissed by Justice Nyakundi on the ground that the petitioner had not adduced any compelling new evidence to warrant review of his case.
6. The petitioner then filed Criminal Petition No. 13 of 2022 seeking for review of his sentence under Article 50(2) (q) of *the Constitution* of Kenya 2010. He argued that the trial court did not consider his mitigation due to the mandatory nature of the sentence under the *Sexual Offences Act*. The petition was dismissed by Justice Githinji on 5/7/2023.
7. I have considered the petition herein. I find the petition to be based on the same grounds as Petition No. 13 of 2022 that was dismissed by Githinji Judge on 5/7/2023. It is therefore an abuse of the court process for the petitioner to have brought a petition similar to the one already dismissed.
8. 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 mandatory sentences under the *Sexual Offences Act* are lawful unless declared unconstitutional in a petition properly filed challenging the unconstitutionality of the provisions.
9. In view of the foregoing, I find no merit in the instant petition and the same is dismissed.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 16TH DAY OF MAY 2025

J. N. NJAGI

JUDGE

In the presence of:

Mr. Oluoch for Respondent

Petitioner: present at G. K. Prison Malindi

Court Assistant – Ndongye

