



**Jomo v Republic (Criminal Revision E060 of 2024)
[2025] KEHC 8836 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E060 OF 2024**

**RB NGETICH, J
JUNE 19, 2025**

BETWEEN

JOAB JOMO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of Defilement of a girl aged 6 years contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No.3 of 2006. Upon full trial, the applicant was found guilty, convicted and sentenced to serve life imprisonment. He states that he was sentenced to life imprisonment and his appeals to the High court was dismissed. He appealed to the Court of Appeal but he is ready to withdraw the same so as to pursue this application.
2. The Applicant has now approached this court seeking sentence review arguing that under Article 50(2)(p) (q) an applicant has a right to benefit from the least severe sentence and have his sentence reviewed.

He argues that life sentence contravenes Section 216 and 389 of the Criminal Procedure Code on mitigation and the values of sentencing as in the sentencing policy guidelines 2016 at paragraph 4:1 and that the high court has competent jurisdiction to hear and determine this application under Article 165(3)(b) of the constitution of Kenya.
3. When the matter came up before court on the 17th February 2025, the Applicant informed the court that he has been in prison for 9 years since he was arrested and he prays for determinate sentence so that he can be released to go and do other works. He stated that he was 19 years at the time he was arrested and he is now 27 years.
4. The court called for a social inquiry report and from the report, the applicant hails from Mukhukumi village, Malava Sub-County in Kakamega County. His family has no known history of crime and prior



- to his arrest, the applicant maintained good family relationship and have been visiting him often at the prison.
5. The applicant dropped out of school in form 3 due to lack of school fees. He later got employed as a barber in Fubuye Centre where he worked for one year. He then relocated to Koibatek Sub-County through an invitation from a friend and was employed as a herd's boy at Solian farm where the incident occurred. He is single, he has no health complications and has no history of drugs nor substance abuse.
 6. The applicant has no history of breaking the law, he is classified to be hardworking and was a strict church goer of repentance and holiness church. According to area chief, the applicant has no criminal records at his home in Shibanga Location. The family members had a dialogue with him at the prison and they indicated that he apologized to them and showed willingness to change. They are of the view that he should be given a chance on non-custodial sentence. They are willing to accept him back and assist in his rehabilitation plan.
 7. The applicant hails from poor family that depends on peasants farming on a half hectare of land. His father passed on in the month of January this year and before his demise he had constructed a one roomed house for the applicant to settle when released.
 8. The victim's home was visited and it was established that the Applicant used to work as a shamba boy for the victim's grandparents and they indicated that he was in a love relationship with their niece (who is the mother to the victim) which had gone sour before the incident. They suspect the applicant could have committed the offence as a way of revenge for being rejected by victim's mother. The applicant's grandmother indicated that on the material day, she left the victim under the care of a neighbor as she went on an errand and on coming back, she was shocked to find the victim alone in the house. On inquiry, the child narrated what happened and they later took her for medical examination which confirmed that the child had been defiled.
 9. He deeply regrets the offence and apologizes to this court. He further alleges that he was in a love relationship with the employer's niece and when the employer found out he started overworking him without pay. He stated that on the material day, his girlfriend rejected him and got involved in a love relationship with another man whom he knew very well. He claims he was carried away by emotions and blame the devil for directing him to commit the offence. He says he has learnt his lesson the hard way and vows never to repeat again and promises to change.
 10. The victim is a grown-up girl now and she remembers vividly what happened on the material day. She is currently in grade nine at Sabatia Primary School and her performance is good. The victim's family say the happening is in the past now and have already forgiven the applicant and have no grudge against him. They have no objection if the applicant is granted non-custodial sentence as he goes back to his home in Kakamega County.
 11. From report by Naivasha Maximum Prison welfare department, the applicant has been disciplined in jail. He is attached at the carpentry section and he is awaiting to sit for his carpentry grade one certificate soon. He says he has taken his prison rehabilitation positively and if granted an opportunity he will bring change to his community.
 12. The probation officer is of the opinion that the applicant is suitable for community-based rehabilitation and that their office will endeavor to offer guidance and counselling to facilitate reconciliation between him and his family members, and to empower him to be self-reliant and to engage in a meaningful economic activity. They recommend the applicant to be placed to perform community service at Namagara Primary School under the supervision of the probation officers Butali probation office for a period of three years.



13. On the 20th May 2025, the prosecution counsel submitted that the accused was charged with defilement contrary to Section 8(1) as read with Section 8(2) where the minor was 6 years old and that the sentence imposed is as per the statute. That the offence will leave a lasting effect on the minor who was only 6 years at the time of sentence and the sentence imposed was appropriate for the offence.
14. In a rejoinder, the applicant prayed for determinate sentence so that he can join his family and support them. He stated that he has learnt a lot in prison and he has certificate in carpentry and his prayer is for this court to consider his case.

Analysis and Determination

15. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
16. In this case, the applicant has stated that he is remorseful, reformed and has rehabilitated having been in prison for 9 years now and his prayer is to be granted a determinate sentence so that he may join his family.
17. The Court of Appeal in the case of Julius Kitsao Manyeso *v Republic (Criminal Appeal 12 of 2021)* [2023] KECA 827 (KLR) (7 July 2023) declared life sentence unconstitutional while stating as follows:
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“...we are of the view that the reasoning in Francis Karioko Muruatetu & Another v Republic [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of *the Constitution*”.
18. Further, in Ayako –vs- *Republic (Criminal Appeal No. 22 of 2018)* [2023] KECA 1563 (KLR) (8 December 2023) (Judgment) the court of appeal in Kisumu held that life imprisonment is cruel and degrading treatment since it is indefinite and decided to allow the appeal on the sentence by reducing Respondent’s sentence of life imprisonment to thirty (30) years. The Respondent was ordered to serve thirty (30) years from the date of his arraignment, being 18th July 2011.
19. The DPP being aggrieved by the Court of Appeal’s decision filed Republic –vs- Ayako (Petition No. E002 OF 2024) [2025] KESC 20 (KLR) before the Supreme Court challenging the court of appeal decision to promulgate or prescribe a period of 30 years to life imprisonment arguing that it was the role of the legislature to do so and further that the court of appeal did not have the jurisdiction to determine constitutionality of life sentence.
20. The supreme court reiterated its position on applicability of rationale in Muruatetu I as clarified in Muruatetu II as follows:-

“In the Muruatetu II Case we reiterated that the rationale in the Muruatetu I Case was only applicable to the mandatory death penalty for the offence of murder under Section 203 as



read with 204 of the Penal Code. Further, we disabused the notion that the rationale could be applied as is to other offences with a mandatory or minimum sentence.”

21. The supreme court further faulted the court of appeal for prescribing or promulgating life sentence to 30 years and stated as follows: -

“...Moreover, by delimiting life imprisonment to a term sentence of thirty (30) years, the Court of Appeal had taken over the mandate of the Legislature in line with Article 94 of the Constitution. In addition, the court had also violated Article 51 of the Constitution which provides that only Parliament can define a category of crime and prescribe punishment to it. Article 51(3) of the Constitution in particular, vests the Legislature with the duty of determining the treatment of prisoners including terms for parole, conditions for release, and supervision upon release. The Appellant cited the case of the Supreme Court of the United States of America in Gore vs United States, 357 U.S. 386, 78 S. Ct. 1280, 2 L. Ed. 2d 1405 (1958) where it was held that the sphere of penology is purely a legislative function and not one for the courts.”

22. The supreme court further stated as follows: -

“...In view of the foregoing, we find that the Court of Appeal ought not to have proceeded to set a term sentence of thirty (30) years as a substitution for life imprisonment, as the effect would be to create a provision with the force of law while no such jurisdiction is granted to it. The term of thirty years was arrived at arbitrarily without involvement of Parliament and the people. In consequence, we find that the Court of Appeal ventured outside its mandate and powers.”

23. From the above decision of the Supreme Court, the court of appeal declared life sentence unconstitutional without proper legal and judicial process being followed. The legislature has not amended the law despite recommendation from the supreme court. Secondly the High court is mandated to interpret the law as provided under Article 165 (3)(d) and the legality of life sentence has not been determined by the High court. The supreme court faulted the court of appeal for declaring life sentence unconstitutional and for prescribing 30 years for life sentence whereas the issue was not properly before the court of appeal. Further that the court of appeal failed to adhere by the doctrine of stare decisis even after the supreme court clarified in Muruatetu II that the decision applied to murder cases only.

24. In view of the above, life sentence imposed against the applicant herein is legal. The applicant was charged with the offence of defilement of a girl aged 6 years contrary to Section 8(1) as read with Section 8(2) of the Sexual offences Act. The prescribed sentence is therein is life sentence. In view of the fact that the sentence imposed is legal, I decline to revise life sentence imposed by the trial court. Application for review of life sentence is hereby dismissed.

25. Final Orders: -

Application for review of sentence is hereby dismissed.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET HIGH COURT
THIS 19TH DAY OF JUNE, 2025.**

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RACHEL NGETICH



JUDGE

In the presence of:

Ms. Omari for the State.

Applicant.

Court Assistants: Elvis/Momanyi.

