



**Kipkoech v Republic (Criminal Revision E002 of 2025)
[2025] KEHC 8760 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E002 OF 2025
RB NGETICH, J
JUNE 19, 2025**

BETWEEN

EMMANUEL KIPKOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Emmanuel Kipkoech was charged with the offence of defilement contrary to section 8(1) as read with section 8 (2) of the [sexual offences Act](#) No. 3 of 2006. The particulars of the charge were that the Applicant on the 13th October 2023 at Mogotio sub county, within Baringo county, intentionally caused his penis to penetrate the vagina of S.J a girl aged 7 years. The Applicant denied the charge and upon hearing and determination of the matter, he was found guilty as charged and sentenced to serve 30 years imprisonment.
2. The applicant has moved this court seeking sentence review under section 363 as read with section 364 of the [criminal procedure code](#) and article 165(3)(9) of the [constitution](#) of Kenya 2010. He avers that he is remorseful and regrets the circumstances that led to the commission of the offence and he promises to be a law-abiding citizen. He urges this court to invoke section 333(2) and 364(b) of the [criminal procedure codes](#) which accords this honourable court the power to revise cases/ proceedings in a subordinate court whose records have been called.
3. When the matter came up for hearing on the 17th February,2025, the applicant prayed for reduction of his sentence and for the period spent in custody to be considered. He stated that he has been in prison for one year and that he has not appealed. He informed the court that he was arrested on 31st October,2023. The prosecution urged this court to call for a social inquiry report.



Social Inquiry Report

4. From the report, the Applicant was born in the year 2005 and is now aged 19 years. He sat for his KCPE in the year 2022 and later proceeded to Koitebes secondary but dropped out of school in form 4 on ground that his parents were unable to provide him and his other siblings with basic needs. He engaged himself with farming related activities in his father's farm. The Applicant is still single with minimal responsibilities.
5. The Applicant did not admit the offence as charged at first. He stated that he was a friend to the victim and had mutual agreement on the matter. The neighbor who is the area village elder who personally saw him with the victim reported the matter to the authority. The Applicant now regrets his action. He pleads with this court for mercy on ground that he is still young and he wishes to go back to school to pursue his education.
6. The Applicant's family described him as a humble and hardworking individual who has no criminal record. They still maintain that their son did not commit the offence but they suspect their son has been charged with the offence due the grudge between the two families. They were not in position to give clear reason for the grudge. They urged the court to allow the applicant serve non-custodial sentence.
7. The local administrator stated the Applicant is well known to him. He indicated that the applicant was of good conduct until he dropped out of school and started being in a group of young men who spend most of the time in alcoholism and he also suspects that the applicant consumes some other drugs like bhang. He said Previously similar cases have been reported to his office but due to lack of evidence it has been hard to hold the applicant accountable to the allegation raised.
8. The area local administrator ruled out the issue of land related issues between the two families indicating that the victim's family relocated to the area from Arama in Koibatek two years ago. He further states that the community is still hostile and wish that the applicant complete his sentence while in custody to serve as a lesson to others who have been involved in other offences. He said there are no issues of conflicts either handled by the village elder whom the applicant claimed had grudge with or his office giving rise to grudge alleged by applicant's family.
9. The victim is 8 years old child and currently in grade 4 at Sorti primary school. The victim has been staying with her grandmother since her mother was married elsewhere. During an interview, the victim indicated she knew the applicant very well and she could not expect the applicant to do such act to her. She narrated that on the fateful day, she was with other children playing at their compound when the applicant approached them and demanded that she follows him to the nearby bush near their home or else he will harm her with a sharp stick he was holding. She said she was defiled and the experience was very painful. The victim is still traumatized and has fear that the applicant may attack her again.
10. The victim's grandmother is still bitter following the applicant's action stating she knows the young man so well since his family is not far from where they live. She said since that time the victim has not been able to go to school alone. She stated that the victim has been passing urine without control despite the many visits she had made to hospital. The grandmother pleads with this court to allow the applicant complete his sentence while in custody to enable the victim heal. She further stated that the family had no room for forgiveness.
11. The victim's class teacher confirmed the victim needed a lot of psychosocial support to enable her gain confidence and deal with fear. The teacher confirmed that the victim has no control over her bladder hence required specialized treatment which her grandmother is not able to provide.



12. The probation officer indicates that this matter is still fresh in the minds of the community bearing in mind that victim is still having health issues which requires urgent attention. The victim is still traumatized and need a continued psychological support to enable her deal with her fears.

Analysis and Determination

13. 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 mandated 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*.

14. The applicant was convicted and sentenced to 30 years imprisonment for offence of defilement of a girl aged 7 years. He prays that the 30-year sentence be reduced. I called for social inquiry report and I have considered sentiments given by the local administration, victim, parents of accused, victim and her grandmother.

15. The objectives of sentencing are outlined in the *2023 Judiciary of Kenya Sentencing Policy Guidelines* at page 15, paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct."

16. I have considered the social inquiry report, specifically the sentiments of the victim, the victim's grandmother and the local administration who all confirm that they have not forgiven the Applicant and the community is still bitter/hostile.

17. Section 8(2) of *Sexual Offences Act* under which accused has been charged provide life imprisonment. The accused was sentenced to 30 years imprisonment.

18. I take note of the fact that in the case of *Julius Kitsao Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) the court of appeal declared life sentence unconstitutional while stating as follows: -

"...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*”.

19. 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 in the present case 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.
20. The DPP being aggrieved the court 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.
21. The supreme court reiterated its position on applicability of rationale in *Muruatu 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.”
22. 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.”
23. 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.”
24. In view of the above, 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.

25. The accused herein was sentenced to 30 years imprisonment whereas section 8(2) of the *Sexual offences Act* provide for a sentence of life imprisonment. I take note of the fact that due to defilement, the complainant who was 7 years at the time of offence has not recovered, she is not able to control urine and she is still traumatized. She has fears that the applicant may harm her if released. From the grandmother's sentiments, the complainant cannot go to school alone as she is still traumatized. I take note of the aggravating circumstances herein and the fact that the applicant has not expressed any remorse and in view of the fact that the section 8(2) under which the applicant was charged provide for life imprisonment, I find that the trial court applied wrong principles by sentencing the applicant to 30 years imprisonment instead of life imprisonment. In view of the above, I am inclined to set aside sentence of 30 years imprisonment imposed by trial court and sentence applicant to life imprisonment.
26. Final Orders: -
- a. Sentence of 30 years imposed by the trial court is hereby set aside
 - b. The applicant is hereby sentenced to life imprisonment.

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

.....

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Omar for State.

Applicant present.

CA, Karanja.

