



REPUBLIC OF KENYA



**Korir v Republic (Criminal Revision E059 of 2024)  
[2025] KEHC 8791 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8791 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL REVISION E059 OF 2024  
RB NGETICH, J  
JUNE 19, 2025**

**BETWEEN**

**SILAS KIPLETING KORIR ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Silas Kipleting Korir 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 accused on the 21<sup>st</sup> day of May,2012 at Koibatek District within Baringo County committed an act which caused his penis to penetrate the vagina of NJ a child aged 2 years.
2. The Applicant faced an alternative charge of Indecent Act with a child contrary to section 11(1) of the [Sexual Offences Act](#) No.3 of 2006. The particulars of the charge were that the accused on the 21<sup>st</sup> day of May,2012 at Koibatek District within Baringo County, committed an act which caused his penis to come in contact with the vagina of NJ a child aged 2 years.
3. The Applicant denied the charge and the matter proceeded for hearing and by judgment delivered on the 3<sup>rd</sup> April, 2013, the trial court found the accused guilty of the main count and proceeded to convict and subsequently sentenced the accused to life imprisonment.
4. The Applicant avers that his first appeal was dismissed in its entirety vide Kabarnet HCCA No.72 of 2013 and he appealed to the court of Appeal in Criminal Appeal No. 135 of 2019 which was also dismissed.
5. The applicant further states that under Article 50(2)(p)(q) of [the constitution](#), an Applicant has a right to benefit from the least severe sentence and have his sentence reviewed. He argues that life imprisonment contravenes Section 216 and 389 of the [Criminal Procedure Code](#) on mitigation and values of sentencing as per the sentencing policy guidelines 2016 at paragraph 4.1.



6. When the matter came up before court on the 17<sup>th</sup> February, 2025, the Applicant informed court that he has been in prison for 14 years. He admits the charge and prays for determinate sentence and that he has Grade 3 in welding.
7. The prosecution counsel submitted that they do not oppose the application by the Applicant for a determinate sentence in light of the recent jurisprudence. The court called for a social inquiry report. From the report, Applicant is married with two children aged 17 years and 15 years and after arrest and the wife went back to her paternal home due to financial difficulties.
8. The Applicant's previous character is said to be good and his family attribute the offence to alcohol. The area chief indicated that the applicant has no previous criminal records of him and they are willing to accept and assist in rehabilitation.
9. The family of accused are not happy at the happening, they term the incident as unfortunate and unbecoming as it brought a lot of shame to the family. They have however forgiven the applicant and are willing to welcome him back home as they believe that he has reformed while in prison. They stated that they have been visiting him at the prison and that he deeply regrets committing the offence.
10. They are pleading with the court to grant the applicant a chance on non-custodial sentence so that he can pick up his life from where he left. The applicant's house was destroyed by the rains, his brothers have plans to put up another house for him and his brother has promised to accommodate him if he is granted an opportunity on non-custodial sentence. They also promise to assist him resettle by contributing money towards buying him a welding machine so that he can make use of the training he got in prison and take care of his wife and children.
11. The community members have little information about the applicant as he was in and out of the community in search of casual jobs, they however have no objection to review of his sentence to non-custodial sentence as he committed the offence away from the community.
12. During the inquiry, the Probation Officer also established that the applicant and the victim's father were close allies, they used to drive tractors and after work they would spend time at the brewing den drinking alcohol. Information from the applicant is that on the material day while from a drinking spree with the victim and their parents, they took a shortcut route through the Maji Mazuri forest back to their home and while in the forest, the applicant was carrying the victim while her parents were behind and they got lost in the forest. He says he searched for victim's parents and in the process took advantage of her, got hold of her and committed the offence.
13. The applicant is remorseful for committing the offence. He knew the victim well as he used to visit their house and were used to each other. He regrets the offence and blames influence of alcohol. He says he has learnt his lesson the hard way and vows never to repeat again. He hails from Uasin Ngishu County while the victim's family were from Timboroa area.
14. The victim and her family's views were not gathered, efforts to trace her home were futile as nobody knows their whereabouts. The two families were neighbours in rental houses but after the incident, it's alleged the victim's family relocated back to their home.
15. The prison report on applicant is good. He has been trained in Art welding and has got grade 1, 2 & 3 certificates in welding. He makes metal doors and windows while in custody. He is physically fit. He has changed his religion from Christianity (Catholic) to Islam (Muslim).



## Analysis and Determination

16. 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](#).
17. The applicant herein has stated that he is remorseful, has reformed and has been rehabilitated as he has been in prison for long and he prays for review of life sentence to determinate.
18. I have considered applicant's prayer for determinate sentence. I have also considered the sentiments of the prosecution who are not opposed to the applicant's prayer citing the change in jurisdiction and the social inquiry report which is favorable to the Applicant.
19. 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](#)".
20. Further, in Criminal Appeal No. 22 of 2018 Evans Nyamari Ayako vs Republic 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.
21. 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.
22. 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."



23. 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.”

24. 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.”

25. In view of the above, from the Supreme Courts 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.

26. The applicant herein was sentenced to life imprisonment for defilement of a girl aged 3 years. He was charged with the offence of defilement contrary to section 8(1) as read with Section 8(2) of the Sexual offences Act. The prescribed sentence therein is life sentence. The inhuman act against the 3-year-old child will traumatize her for the rest of her life. Positive report has been given about the applicant. The fact that he has taking imprisonment positively and reformed is commendable. However as observed from the above supreme court decision, life sentence is statutory, it is legal as no procedure legal process has been used to outlaw life sentence. In view of the fat that the sentence imposed against the accused is legal and no exceptional circumstance has been advanced to want review of sentence of life imprisonment, I decline to revise the sentence imposed by the trial court. Application for review of life sentence is hereby dismissed.

27. Final orders: -

Application for review of sentence is hereby dismissed.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 19<sup>TH</sup> DAY OF JUNE, 2025.**



.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

- Ms. Omari for State.
- Applicant present.
- CA, Elvis/Momanyi.

