



REPUBLIC OF KENYA



KENYA LAW
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**Kiplagat v Republic (Criminal Revision E299 of 2024)
[2025] KEHC 8347 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E299 OF 2024**

E OMINDE, J

JUNE 12, 2025

BETWEEN

MATHEW KIPKOGEI KIPLAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has approached this Court vide an undated Notice of Motion filed on 24/06/2024 seeking a resentencing hearing. The Applicant was charged with two counts of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* in Eldoret Chief Magistrate's Criminal Case No. 1541 of 2012. On 13/07/2016 he was found guilty on both counts. He was sentenced to life imprisonment on Count I and on Count II he was sentenced to served (25) years imprisonment which sentences were ordered to run concurrently.
2. Dissatisfied with the sentence and conviction, the Applicant lodged an Appeal in this Court, namely, Eldoret High Court Criminal Appeal No. 80 of 2016. The Appeal was heard and dismissed in its entirety vide the Judgment delivered on 26/09/2018 by Kimaru J. Dissatisfied with the decision of this Court, the Applicant filed Eldoret Court of Appeal Criminal Appeal No. 362 of 2019 which was dismissed on 21/06/2024 by Hon. Lady Justice F. Sichale, Hon. Lady Justice L. Achode and Hon. Mr. Justice W. Korir and both the conviction and sentence were upheld.
3. The Applicant has now returned to this same Court with the present Application seeking for a sentence review. He states that he has no pending Appeal and has therefore moved the court under the provisions of Articles 165(3)(b), 22, 23, 50(2)(p) & (q), 50(6)(a) of the *Constitution*. He states that this court has powers under the *Constitution of Kenya 2010 Practice and Procedure Rules* to hear and determine applications on the infringements of fundamental rights and award remedies. He therefore pleads that he has been in prison for (9) years so far, and that he has taken advantage of the rehabilitation programs



offered in prison and urges that the court reviews his sentence under the provisions of Article 50(2)(p)(q) of the Constitution.

4. The State through the Prosecution Counsel, Mr. Thuo in his oral submissions stated that the applicant is attempting a third bite of the cherry in light of the decision of the Hon Kimaru J and that of the Justices of the Court of Appeal and urged the court to so find and dismiss this appeal.

Determination

5. Having considered the Application as well as the attendant proceedings, it is my considered opinion that the only issue for determination is;

“whether this Court should substitute the sentence of life imprisonment imposed by the trial court”

6. Section 8(2) of the Sexual Offences Act provides as follows:

“A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.”

7. Section 8(2) above therefore prescribes only one mandatory sentence – life imprisonment. In view of the above, it is clear that the sentence imposed by the trial Court was within the law and is therefore legal. On the constitutionality of the sentence that has been challenged by the Applicant, the following decisions are relevant.

8. The Supreme Court in the case of Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024) (Judgment) in setting aside the decision of the Court of Appeal overturning a sentence of life imprisonment imposed by the trial court and upheld by the High Court for reasons that it is indeterminate and therefore unconstitutional and substituting it with a sentence of 20 years imprisonment stated as follows in reaffirming the lower court’s decision;

In any case, the sentence imposed by the trial court against the Respondent and affirmed by the first appellate court was lawful and remains lawful as long as Section 8 of the Sexual Offences Act remains valid.

9. This position on the minimum mandatory sentences as provided under the Sexual Offences Act was again restated by the Supreme Court in its most recent decision being Petition No. E002 of 2024 Republic v Evans Nyamari Ayako. In view of these decisions, the fact is that the legality and constitutionality of the sentences prescribed under the Sexual Offences Act have not changed and so there is no lesser sentence for the accused to benefit from under the provisions of Article 50(2)(p) & (q) cited and relied upon by the applicant to warrant a review of his sentence on the basis that the sentence of life imprisonment being indeterminate nature, is unconstitutional.

10. In light of the above, it is my finding that the Applicant’s Application lacks merit and I now hereby dismiss the same in its entirety. Right of Appeal 14 days

READ DATED AND SIGNED AT ELDORET ON 12TH JUNE 2025.

E. OMINDE

JUDGE

