



REPUBLIC OF KENYA



**Nyambura v Republic (Criminal Revision E207 of 2024)  
[2025] KEHC 8971 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL REVISION E207 OF 2024  
EM MURIITHI, J  
JUNE 19, 2025**

**BETWEEN**

**GERALD NDEGWA NYAMBURA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offence Act* No. 3 of 2006. The particulars of the offence are that on diverse dates between August 2017 and 17<sup>th</sup> November, 2018 at [Particulars Withheld] village in Mwea west sub-county within Kirinyaga County, intentionally and unlawfully caused his penis to penetrate the vagina of RWW a child aged 10 years. He was sentenced to 40-year imprisonment on 27<sup>th</sup> November, 2020.
2. He did not lodge an appeal.
3. The applicant has been in custody for 4 years. He seeks a review of his 40 years sentence as he has reformed. The applicant submits that he has been rehabilitated while in prison. He has undertaken course in carpentry, Certificate in Resource Oriented Development and certificates in Bible studies.
4. The prosecution submits that the application is premature as he stands to benefit from section 46 of the *Prison Act* being considered of Remission on industry and good conduct.

**Issue**

5. Whether the applicant is entitled to review of sentence.

**Analysis**

6. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offence Act* No. 3 of 2006.



7. He is serving 40 years sentence. He seeks review of his life sentence downwards. He has been in prison for 4 years.
8. He urges the court to consider that he is a first time offender and he has been rehabilitated while in prison.
9. Article 165 (3) (b) grants the High Court original jurisdiction to determine the question whether a right or fundamental freedom under the Bill of Rights has been denied, infringed, violated or threatened.
10. The applicant had been sentenced to 40 years imprisonment by the trial court. He did not appeal the sentence.
11. The following Supreme Court decision held that courts have no authority amend statutes. The court's role with regard to the constitutionality of a statute is therefore confined to its interpretation and adjudication. The Court in *Republic v Manyeso* (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment) said:

“Courts cannot therefore extend their determination to rectifying or amending the statute in question, as this would contravene the doctrine of separation of powers, which delineates the functions of the judiciary, legislature, and executive. Courts must exercise caution when crafting remedies to avoid overstepping their judicial mandate and intruding upon legislative functions by prescribing or enacting amendments. When courts recognize the need for legislative intervention, it is both proper and imperative for them to recommend such measures to the appropriate authorities for adoption....We therefore find no difficulty in finding that the Court of Appeal erred in law by substituting the life imprisonment sentence with a 40-year sentence, thereby usurping the legislative power to define sentences.”

12. Emphasizing the legislative role of the Parliament, the Supreme Court in *Republic v Manyeso* (*supra*) put the matter out of the Court's hands and said:

“We therefore recommend that the Attorney General and Parliament commence an enquiry and develop legislation on the definition of ‘what constitutes a life sentence’; this may include a minimum number of years to be served before a prisoner is considered for parole or remission, or provision for prisoners under specific circumstances to serve whole life sentences. This will be in tandem with the objectives of sentencing.”

13. Clearly, the Court has no jurisdiction to substitute a term of years of imprisonment, and the applicant having benefitted from such a substitution under the law as it stood then, is obliged to serve the sentence. As there is no appeal from the sentence, and the Applicant has not been warned of possibility of enhancement of sentence this court, unlike the Supreme Court in *Republic v Ayako* (Petition E002 of 2024) [2025] KESC 20 (KLR) (11 April 2025) (Judgment), cannot reinstate the life sentence applicable to offence of defilement of a child aged 10 years, and this Court must leave the matter at the trial court's sentence of imprisonment for 40 years.

## Orders

14. Accordingly, for the reasons set out above, the Application for re-sentencing herein is declined.
15. File closed.  
Order accordingly.



**DATED AND DELIVERED ON THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for the DPP.

Applicant in person.

