



**ANN v Republic (Miscellaneous Criminal Application
E164 of 2024) [2025] KEHC 10047 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E164 OF 2024**

JM NANG'EA, J

JULY 10, 2025

BETWEEN

ANN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged, convicted and sentenced to 20 (twenty) years in prison for the offence of Incest contrary to section 20 (1) of the *Sexual Offences Act* No. 3 of 2006 before the Chief Magistrate's Court at Nakuru in Criminal Case File No. 64 of 2016 . The particulars of the offence state that on diverse dates between the years 2006 and 2013 in [Particulars Withheld] of Nakuru County the Applicant willfully and unlawfully inserted his genital organ namely, penis, into the genital organ namely, vagina, of W. M aged 14 who he knew as his daughter .
2. It is alleged in the alternative that the Applicant committed an indecent act with a child contrary to section 11(1) of the same Act. The particulars of the charge are that during the same period and at the same place he intentionally and unlawfully touched the buttocks, breasts and vagina of the child. He denied the charges.
3. The Applicant lodged an appeal with this court through Criminal Appeal File No. 42 of 2017, which appeal was dismissed.
4. The Applicant is now seeking re-sentence rehearing, and in particular prays for invocation of the provisions of section 333 (2) of the *Criminal Procedure Code*.
5. The Applicant did not file submissions.
6. The prosecution Counsel (Ms Sang) thinks that the application lacks in merit for the reason that this court has dismissed the Applicant's appeal against both conviction and sentence of the lower



court. Citing inter alia the judicial determination in Daniel Otieno Oracha V. Republic (2019) eKLR Counsel submits that the court is bereft of jurisdiction in the circumstances.

7. The Constitutional and Human Rights Court's decision in consolidated Petitions Nos. 5 and 6 of 2022 (Ramadhan & 8 Others V. Attorney-General and Another 2024 KEHC 1173 (KLR) (6 February 2024) (Judgement) and Machakos High Court case, Philp Mueke Maingi & Others V. Republic ,drawing from jurisprudence in the famous Supreme Court case of Francis Karioko Muruatetu, had concluded that minimum mandatory sentences prescribed for offences such as the Applicant was convicted of herein were declared unconstitutional for fettering judicial discretion to determine an appropriate sentence based on the peculiar facts and circumstances of each case,. A similar opinion was expressed in this court's decision in William Okungu Kittiny V. Republic (2018) eKLR.
8. The Supreme Court in what has come to be known as the Muruatetu 2 decision has, however, clarified that its earlier judgement in the Muruatetu 1 declaring the mandatory nature of the death sentence for the offence of murder as unconstitutional, only applied to murder cases. The apex court's more recent decision in Constitutional Petition No. 018 of 2023 (Republic V. Joshua Gichuki Mwangi & Others also referred to by the Respondent reiterates the position and exhorts litigants wishing to challenge laws prescribing mandatory and/or minimum sentences for offences other than murder to mount the challenge from the High Court, and if necessary escalate the dispute to the Court of Appeal, for a final decision to be made. The Supreme Court's decision in the Muruatetu 1 case does not therefore apply to defilement cases for the reasons given. The Applicant was lawfully sentenced.
9. The Applicant's plea to be accorded the benefit of section 333 of the Criminal Procedure Code is, however, valid. The record of the lower court does not show compliance with this statutory provision which requires the period the convict was in remand custody awaiting trial to be taken into account in computing and executing the prison sentence imposed. The Applicant was arrested on 5th March 2015 as per the charge sheet and the record does not show that he was subsequently released on bond/ bail. It is accordingly ordered that the prison term of 20 (twenty) years commences from the date of the Applicant's arrest on 5th March 2015.
10. Save for this limited extent only, the application is dismissed.

RULING DELIVERED THIS 10TH DAY OF JULY, 2025 IN THE PRESENCE OF:

J. M. NANG'EA, JUDGE.

The Prosecution Counsel, Mr Wakasyaka.

The Applicant, present

The Court Assistant, Jeniffer

