



**Hungulu v Republic (Miscellaneous Application E038 of 2025)
[2025] KEHC 10509 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10509 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E038 OF 2025**

**A MABEYA, J
JULY 21, 2025**

BETWEEN

ARCADIUS HUNGULU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 8/2/2021, Arcadius Hungulu was charged with the offence of defilement contrary to section 8 (1) of the *Sexual Offences Act* 2006. It was alleged that on the 18/03/2020 at xxxxxx within Kisumu County, he intentionally caused his penis to penetrate the anus of L.O.O, a child aged 9 years old.
2. After trial he was found guilty and convicted of the offence and sentenced to 12 years' imprisonment.
3. By an undated Motion on Notice, the applicant has sought review of his sentence on the grounds that his studies were interrupted. The State has opposed the application stating that the sentence passed by the trial court was lenient enough and therefore this Court ought not interfere with the same.
4. Section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* provides: -

“8(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement

8(2) 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.”
5. The applicant was given a lenient sentence of 12 years instead of the mandatory life imprisonment.
6. The issue of mandatory sentences in Kenya was considered by the Supreme Court in the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR (commonly referred to as Muruatetu 1). It had been interpreted by many that the decision was authority to the effect that, just like in cases of



murder, those who were convicted of sexual offences and whose sentences were passed on the basis that the trial Courts had no discretion but to impose the said mandatory sentences are now at liberty to petition the High Court for orders of resentencing in appropriate cases.

7. However, in Francis Kariuki Muruatetu & Another v Republic: Katiba Institute & 5 Others (Amicus Curiae) (2021), Muruatetu 2, the Supreme Court clarified that its directions given in Muruatetu (1) regarding the unconstitutionality of mandatory sentences was limited only to cases of murder and did not necessarily extend to sexual offences (see also Juma Abdalla v Republic, Court of Appeal Criminal Appeal No. 44 of 2018 (2022) KECA 1054 (KLR) (7 October 2022).
8. The Court of Appeal in the case of Kazungu v Republic (Criminal Appeal E010 of 2023) [2025] KECA 778 (KLR) (9 May 2025) (Judgment): -

“The Supreme Court in Republic vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (2024) KESC 34 (KLR) clarified that mandatory minimum sentences under the *Sexual Offences Act* are legal. Accordingly, we find no fault in the sentence imposed upon the appellant merely because it is the mandatory minimum prescribed by the Act, and we have no reason to interfere therewith.”

9. It is clear from the foregoing that it will not be lawful to interfere with the sentence meted out on the applicant. The applicant should thank his God that the mandatory life sentence was not meted out on him as prescribed in section 8 (2) of the *Sexual Offences Act* 2006.
10. The upshot of the foregoing is that the application lacks merit and is hereby dismissed.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

