



REPUBLIC OF KENYA



KENYA LAW
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**Kisiswa v Republic (Criminal Petition E008 of 2023)
[2025] KEHC 10498 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL PETITION E008 OF 2023**

JN KAMAU, J

JULY 16, 2025

BETWEEN

FREDRICK KIBIENDA KISISWA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein 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. He was also charged with an alternative charge of the offence of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#). He was convicted of the main charge and sentenced to life imprisonment.
2. In its decision of 28th November 2024, this court directed the DR High Court Vihiga to liaise with the Trial Court to obtain the missing proceedings to enable this court consider the Petitioner's prayer under Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya). It also directed that this matter would be mentioned on 29th April 2025 to confirm compliance and/or for further orders and/or directions. As at 15th July 2025, when the matter was last mentioned, the missing proceedings had not been availed as they could not be traced.
3. This court noted that the Trial Court sentenced the Petitioner to life imprisonment. This court was able to retrieve a decision by Musyoka J that he delivered on 12th November 2021 in Kakamega Criminal Petition No 19 of 2020 to wit Fredrick Kibeinda vs Republic [2021]eKLR. In the said matter, the Learned Judge struck out the Petitioner's Petition as his sentence of life imprisonment had been upheld in Kakamega HCCRA No 14B of 2014.
4. Based on the basis of the reasoning of the Court of Appeal decisions of Manyeso [vs Republic \(Criminal Appeal 12 of 2021\)](#) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) and Ayako vs Republic [2023] KECA 1563 [KLR] which equated life imprisonment to a determinate sentence of thirty (30) and forty



(40) years respectively, this court allowed the Petitioner's Petition for re-sentencing and re-sentenced him to thirty (30) years.

5. This court took the view that as the two (2) Court of Appeal decisions were delivered way after the decisions of Criminal Petition No 19 of 2020 to wit Fredrick Kibeinda vs Republic [2021]eKLR and Kakamega HCCRA No 14B of 2014, it was only fair that the Petitioner herein enjoyed the equal benefit of the law as was envisioned by Article 27(1) of *the Constitution* of Kenya, 2010.
6. Although the missing proceedings were not availed to this court, it found it prudent to proceed with the proceedings that were in the file as it could not keep this matter in abeyance indefinitely. As the Petitioner's sentence of life imprisonment that was meted out to him by the Trial Court was subsequently upheld during trial, the period he had spent in remand could not be taken into account as he was serving an indeterminate sentence. However, as the Petitioner was now serving a determinate sentence, this court could now consider the said period.
7. Notably, the Petitioner was arrested on 9th March 2012. He was convicted on 31st December 2013. However, there are no records to show when he was sentenced. There even no warrants of conviction. He could not also remember when he was sentenced stating that it was many years ago. The court could not also trace Kakamega HCCRA No 14B of 2014 in the Kenya Law Report website. As the last proceedings in the file showed that he was in custody as at 31st May 2012, this court determined that this was the only period that it could grant him because it was certain that he was in custody during this period. It was difficult to ascertain if he ever left prison and when he was sentenced.

Disposition

8. For the foregoing reasons, the upshot of this court's decision was that the period between 9th March 2012 and 31st May 2012 when the Petitioner remained in custody while his trial was going to be taken into account while computing his sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
9. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 16TH DAY OF JULY 2025

J. KAMAU

JUDGE

