



**Kiilu v Republic (Miscellaneous Criminal Application  
E045 of 2024) [2025] KEHC 10345 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10345 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
MISCELLANEOUS CRIMINAL APPLICATION E045 OF 2024**

**CW MEOLI, J**

**JULY 15, 2025**

**BETWEEN**

**RAPHAEL KAVOI KIILU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Raphael Kavoi Kiilu by his motion dated 21<sup>st</sup> June 2024 seeks re-sentencing pursuant to the Supreme Court decision in *Francis Karioko Muruatetu and Others v Republic* SC Petition No. 15 of 2015 [2017] eKLR.
2. From this affidavit in support of the motion, the Applicant was tried and convicted for the offence of defilement contrary to Section 8[1] as read with Section 8[2] of the *Sexual Offences Act* before the Chief Magistrate’s Court Kajiado in Criminal Case SO No. 1585 of 2006. He was sentenced to life imprisonment.
3. Thereafter the Applicant filed an appeal before the High Court at Machakos being HCCRA No. 37 of 2007 which was dismissed by Lenaola J [as he then was], in 2008. His subsequent appeal to the Court of Appeal, viz Criminal Appeal No. 198 of 2008 suffered the same fate in 2010.
4. He now prays that this court, in consideration of the prison term served, and his advanced age directs that “the remaining sentence” be served under probation. He attacks the life sentence meted on him as *inter alia* unconstitutional and constituting degrading treatment. He also relies on the decision of the Court of Appeal in *Manyeso v Republic* CRA No. 12 of 2021 [2023] KECA 827 [KLR].
5. The decisions upon which the Applicant predicates his motion have in recent times been considered by the Supreme Court. The rationale in the *Muruatetu case* [supra] has hitherto been applied in many cases involving offences under the *Sexual Offences Act*. Including *Christopher Ochieng v Republic* [2018] eKLR and *Manyeso v Republic* CRA No. 12 of 2021 [2023] KECA 827 [KLR].



6. However, the Supreme Court has recently pronounced itself in *Republic v Mwangi and Others*; Petition No: E018 of 2023 [2024] KESC 34 [KLR] as follows, regarding minimum sentences prescribed under Section 8 of the *Sexual Offences Act*:

“In any case, the sentence imposed by the trial court was lawful and remains lawful as long as Section 8 of the *Sexual Offences Act* remains valid. We reiterate that the Court of Appeal had no jurisdiction to interfere with the sentence.”

7. Further, in *Republic v Evans Nyamari Ayako* Petition No: E002 of 2024 the Supreme Court in its judgment delivered on 11th April 2024 stated that:

“[51] In the instant case, the Court of Appeal in its judgment, referred to the case of *Manyeso v Republic case* where a different bench of the Court of Appeal cited the *Muruatetu I* case in stating that the rationale therein applied mutatis mutandis to the issue of mandatory indeterminate life sentence.

In *Muruatetu II Case* we reiterated that the rationale in the *Muruatetu I Case* was only applicable to the mandatory death penalty for the offence of murder under Section 203 as read with 204 of the *Penal Code*. Further, we disabused the notion that the rationale could be applied as is to other offences with a mandatory or minimum sentence.” [emphasis added].

8. In the circumstances, as explained in *Muruatetu II case* above, the decision in the *Muruatetu I case* cannot be applied in sentencing an offender convicted under Section 8 of the *Sexual Offences Act*, and this court, like the Court of Appeal in *Mwangi’s case* above, lacks the jurisdiction to interfere with the life sentence imposed by the trial court.

9. In the circumstances, this court lacks the jurisdiction to entertain the motion dated 21<sup>st</sup> June 2024 which is hereby struck out.

**DELIVERED ELECTRONICALLY AT KAJIADO ON THIS 15<sup>TH</sup> DAY OF JULY 2025.**

**C.MEOLI**

**JUDGE**

In the presence of:

For the State: Mr. Kilunda

Applicant: present

C/A: Lepatei

