



**Maso v Republic (Miscellaneous Criminal Application
E047 of 2024) [2025] KEHC 10109 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
MISCELLANEOUS CRIMINAL APPLICATION E047 OF 2024**

**JN NJAGI, J
JULY 11, 2025**

BETWEEN

MBARAKA HAMISI MASO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed an application dated 11th November 2024 seeking for review of sentence pursuant to section 364 of the *Criminal Procedure Code*. The application is supported by the affidavit of the applicant in which he says that he was sentenced to serve life imprisonment for the offence of defilement contrary to Section 8[2] of the *Sexual Offences Act* No 3 of 2006. That he thereafter filed an appeal and the sentence was substituted with a sentence of 40 years imprisonment.
2. It is the contention of the application that the sentence of 40 years imprisonment is harsh and excessive considering the life span of human being in today's life. In view of this he is asking the court to consider the mitigating circumstances in his case and review the sentence of 40 years imprisonment.
3. The respondent opposed the application on the ground that the applicant appealed against the conviction before justice Thande of the High Court and his appeal was dismissed. Therefore that there is no basis for review of sentence in face of the fact that his appeal was dismissed by the High Court.
4. The applicant made written submissions in the case. He submitted that the objective of sentencing is to ensure that the victim of the offence is accorded justice and that the offender is rehabilitated. That in his case he is aged 57 years and that by the time he completes the sentence of 40 years, if at all he will be alive he will only be a burden to his family and state. He urged the court to review his sentence



and give him a second chance in life. He relied on the case of *Ali Abdalla Mwanza vs Republic* [2018] where the court held as follows:

“considering the circumstances of the matter which is really the guiding principle in sentencing, we ask ourselves whether the sentence of 40 years is manifestly excessive bearing in mind the age of the appellant at the time of conviction. In this case it is obvious to us if the appellant were to serve the entire 40 years sentence with the above life expectancy of about 67 years, the sentence would go beyond the life expectancy and in that case it would appear manifestly excessive.

In the circumstances we partially allow the appeal and substitute the sentence of 40 years with a term of 20 years from the date of conviction”

5. The applicant stated that he has as a result of prison incarceration been transformed and pleads for forgiveness for the offence committed.
6. I have considered the grounds in support of application and the grounds in opposition thereto. The application is made pursuant to the provisions of sections 362 and 364 of the *Criminal Procedure Code* which empowers the High Court to review decisions of Subordinate Courts on grounds of illegality, incorrectness or impropriety.
7. The section under which the Applicant was convicted of provides for a mandatory sentence of life imprisonment. The Supreme Court in the case of *Republic -v- Joshua Gichuki Mwangi*, Petition No. E018 of 2023, stated that the mandatory sentences stipulated in the *Sexual Offence Act* are lawful. In that case, a sentence under the Sexual Offence Act cannot be reviewed on grounds of illegality, incorrectness or impropriety since the sentence is lawful. I therefore do not see any reason to interfere with a lawfully sanctioned sentence meted out on the applicant.
8. The upshot is that I do not find any merit in the application. The application is consequently dismissed.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 11TH DAY OF JULY 2025.

J. N. NJAGI

JUDGE

In the presence of:

Ms Mkongo for the Respondent

Applicant: Present virtually at GK prison, Malindi

Court Assistant – Ndongye

