



Omari v Republic (Petition E006 of 2022) [2025] KEHC 9716 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
PETITION E006 OF 2022
CM KARIUKI, J
JULY 4, 2025**

BETWEEN

ROBERT BISARE OMARI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The petitioner was charged convicted and sentenced to life imprisonment for the offence of defilement c/s 8(1) as read with section 8(2) of *sexual offences Act* no 6 o 2006 in Kilgoris PMs court case no 958 of 2010. He appealed to the High court Vide High Court at Kisii -HRA no 1010 of 2011 where both conviction and sentence were upheld. He proceeded to appeal to court of appeal but eventually withdrew the appeal and opted to approach this court-High Court for resentencing in the form of the instant petition.
2. He premises his petition for resentencing on the ground that mandatory life imprisonment sentence is unconstitutional as it deprives court discretion in sentencing.
3. He relies on various High court and Court of appeal decisions which had held so to that effect. However, he may not be aware the fact that, in Supreme case of Joshua Mwangi Gichuki Petition No E018 of 2023 on verdict of 12.7.2024 which held that,
4. “Mandatory sentences leave the trial court with absolutely no discretion such that upon conviction, the singular sentence is already prescribed by law. Minimum sentences however set the floor rather than the ceiling when it comes to sentences. What is prescribed is the least severe sentence a court can issue, leaving it open to the discretion of the courts to impose a harsher sentence. In fact, to use the words mandatory and minimum together convolutes the express different definitions given to each of the two words. Although, the term ‘mandatory minimum’ can be found used in different jurisdictions, including the United States, and in a number of academic articles, it is not applicable as a legally



recognised term in Kenya. In this country, a mandatory sentence and minimum sentence can neither be used interchangeably nor in similar circumstances as they refer to two very different set of meanings and circumstances”.

5. The court held that the only way to challenge the provisions of mandatory or mandatory sentences, is by specifically filing a petition in the High court and specifying the specific provisions such as section 8(2) of the SOA no 6 of 2006 and the court to determine constitutionality thereafter may escalate to Court of Appeal and if need be, to the Supreme Court. As of now no such process has been undertaken to impugn the provisions in issue.
6. Thus, in view of the said decision of the Joshua Mwangi Gichuki by the supreme court on 12.7.2024, this court is bound that verdict thus has no jurisdiction to entertain instant petition.
7. In the end the court makes the following orders.
 - i. The application is rejected and thus struck out.

DELIVERED AND DATED AT KILGORIS THIS 4TH DAY OF JULY, 2025

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CHARLES KARIUKI

JUDGE

