



**Masibo v Republic (Criminal Revision E017 of 2025)
[2025] KEHC 13241 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E017 OF 2025
RN NYAKUNDI, J
SEPTEMBER 25, 2025**

BETWEEN

SIMON MASIBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is a notice of motion dated 25th day of February 2025. The Applicant sought for the following orders:
 1. That the criminal review is founded on Section 362 as read with Section 364 of the Criminal Procedure Code and in reliance to Article 50 (2) (q) of the Constitution of Kenya 2010.
 2. That the petitioner is seeking for orders for a reduction of his imposed illegal sentence of 30 years to afford him the benefit of Article 50(2) (p) of COK for a less severe sentence, which should include a reduction to the time already served or impose a non-custodial sentence.
 3. That the petitioner is seeking for orders for a review of his sentence on the time spent in remand custody under Section 333(2) of the CPC Cap 75 of the Laws of Kenya and sentencing and Sentencing Policy Guidelines 2023.
 4. That the petitioner is seeking for orders for a sentence reduction in consideration of sentencing principles that were not applied during the sentence hearing.
 5. That the applicant is praying to be present during the determination of this application.

Which application is supported by the annexed affidavit of Simon Masibo on the following grounds:



1. That I was charged with the offences of defilement contrary 8(1) & 8(3) of SOA and was convicted and sentenced under the alternative charge of committing an indecent act with a child to serve 30 years imprisonment by CM's court at Eldoret by Hon. Wairimu on 24th April 2019.
2. That a petitioner filed an appeal E069 of 2019 which was unsuccessful as the appellate court retained the 30 years I was serving by wrongly indicating I was serving a life sentence earlier.
3. That the petitioner has now filed a criminal review for consideration by the court under Section 362 A.R.W Section 364 of CPC and Article 50(2) (q) COK on the following grounds:
4. That the trial court committed an illegality by imposing a 30 years sentence while the *Sexual Offences Act* under Section 11(1) provide a mandatory maximum sentence which could have made it possible for the court to impose a sentence less than (10) ten years in the absence of extraneous and aggravating circumstance in compliance to Article 50(2) (p) of COK.
5. That the court on its review should find my case suitable for a reduction to the time already served as sufficient punishment as I have served a better part of my sentence. In the alternative a non-custodial sentence of probation or community service order should be imposed.
6. That the trial court did not factor a period of two (2) years and 4 months while determining the sentence of 30 years in compliance to Section 333(2) of CPC. Petitioner did not get admitted to bail.
7. That the sentence of 30 years was marked with non-application of principles of sentencing such as mitigation and proportionality. The sentence is unproportionate as it is harsh and excessive and the mitigation on record should earn him one third reduction of the new imposed sentence.
8. The petitioner is urging the Hon. Court to make a finding that the remainder of his sentence after considering the above prayers that he is suitable for a non-custodial sentence to either probation or community service order in compliance to Judiciary Policy on periodic decongestion of prison.

Decision

2. The Applicant has been in this Court severally the last time being on 16th May 2024 when I pronounced the decision on the findings of the appeal as follows:

“I have considered the facts of this case the nature and severity of the offence, the principles of proportionality, any mitigation like the Appellant being the first offender, it is my view that life imprisonment is harsh and punitive for it emphasizes more of deterrence than rehabilitation. I accordingly review the life imprisonment sentence and have it substituted with a custodial sentence of 30 years.”



3. The Applicant’s case both in facts and principles of law is similar with that of Republic vs Julius Kitsao Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR). The Supreme Court pronounced itself as follows:

“Courts cannot therefore extend their determination to rectifying or amending the statute in question, as this would contravene the doctrine of separation of powers, which delineates the functions of the judiciary, legislature, and executive. Courts must exercise caution when crafting remedies to avoid overstepping their judicial mandate and intruding upon legislative functions by prescribing or enacting amendments. When courts recognize the need for legislative intervention, it is both proper and imperative for them to recommend such measures to the appropriate authorities for adoption. As a court we have invoked this remedy in various instances; in *Shah & 7 others v Mombasa Bricks & Tiles Limited & 5 others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) we suggested the consideration of reforms over the recourse parties have upon the declaration of trust by the courts and how to actualize the same, especially regarding the aspect of shareholding. In *Malcolm Bell v Daniel Toroitich Arap Moi & Board of Governors Moi High School Kabarak* (Application 1 of 2013) [2013] KESC 23 (KLR) Hon. Justice Kaplana Rawal, DCJ in her concurring opinion made recommendations to amend Section 16 of the [Supreme Court Act](#). In *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] KESC 53 (KLR) we urged CAK to set a timeline for the digital migration. In *National Bank of Kenya Limited v Anaj Warehousing Limited* (Petition No 36 of 2014) [2015] KESC 4 (KLR) we suggested appropriate legislative action to be taken to address the gaps and inconsistencies apparent in the [Advocates Act](#).”

4. This therefore means that the court has the jurisdiction to review custodial sentence and have it substituted with the legislative scheme of punishment of life imprisonment. The Applicant therefore is put on notice to file any submissions on this matter. The consequence of it is that his application has no merit in law. It is good for dismissal without any remedy being passed to the Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 25TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI
JUDGE

