



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kadenge v Republic (Criminal Revision E186 of 2023)  
[2024] KEHC 229 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 229 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E186 OF 2023**

**A. ONG'INJO, J**

**JANUARY 19, 2024**

**BETWEEN**

**JUMA KADENGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged, convicted and sentenced to suffer death for the offence of robbery with violence contrary to section 296(2) of the *Penal Code* cap 63 laws of Kenya in Mombasa Chief Magistrates Court Criminal Case No. 1680 of 2011.
2. The Applicant appealed the decision in Mombasa High Court Criminal Appeal No. 214 of 2015 but the appeal was dismissed and the conviction and sentence of the trial court confirmed. The sentence was later commuted to life imprisonment.
3. The applicant therefore prays that his sentence be reviewed in consideration of the 12-year period spent in custody and that he has reformed.
4. The Supreme Court in the case of *Francis Karioko Muruatetu & another -vs- Republic* Petition No. 15 of 2015 (2017) eKLR stated mitigating guidelines in resentencing to include the following: -
  - (a) age of the offender;
  - (b) being a first offender;
  - (c) whether the offender pleaded guilty;
  - (d) character and record of the offender;
  - (e) commission of the offence in response to gender-based violence;



- (f) remorsefulness of the offender;
  - (g) the possibility of reform and social re-adaptation of the offender; and
  - (h) any other factor that the court considers relevant.
5. In *Julius Kitsao Manyeso v Republic*, the Court of Appeal in Malindi Criminal Appeal No. 12 of 2021 applied the reasoning in *Francis Karioko Muruatetu & others v Republic* that the imposition of mandatory indeterminate life sentence is inhuman treatment and violates the right to dignity under article 28 of *the Constitution* namely that such a sentence denied a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences were allowed to be heard in mitigation. That it was an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of *the Constitution*.
6. The court of appeal was also persuaded by the reasoning in the European Court of Human Rights in *Vinter & others v The United Kingdom* that an indeterminate life sentence without any prospect of release or a possibility of review is a degrading punishment and that it is now a principle in international law that all prisoners including those serving life sentences be offered the possibility of rehabilitation and the prospects of release if that rehabilitation is achieved. They however were of the view that the appellant having been convicted for defiling a child of 4 years and for the likely ramifications of his actions on the child's future, he also merited a deterrent sentence.
7. In the case of *Juma Mohamed Ng'azi v Director of Public Prosecutions* (2021) eKLR Ogola, J. in resentencing held that the aggravating factors outweighed the mitigating factors and that the court must send out a clear warning to would-be offenders that once found guilty the shall be adequately be punished.
8. In this matter, the applicant who was a servant to the complainant took advantage of his access to the complainant's house and attacked the complainant and her daughter while they were deep asleep and inflicted fatal injuries to the daughter. He breached the servant-master relationship or trust and committed this heinous crime in a very cruel manner and inasmuch as he is entitled to know how long he will be incarcerated, his incarceration must mirror the seriousness of the offence that he committed as the same outweighs mitigation by the applicant. Life sentence is therefore set aside and substituted with imprisonment for 40 years to run from 24<sup>th</sup> May 2011 when he was first arraigned in court.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS 19<sup>TH</sup> DAY OF JANUARY 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Abdul- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person from GK Prison Kisumu

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

