



**Mwanjembe v Republic (Miscellaneous Criminal Application
E150 of 2023) [2024] KEHC 177 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E150 OF 2023**

**A. ONG'INJO, J
JANUARY 19, 2024**

BETWEEN

MWALONGO CHICHORO MWANJEMBE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Mwalongo Chichoro Mwanjembe was convicted for the offence of defilement in Mariakani SRMC Sexual Offence Case No. 51 of 2012 contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars were that Mwalongo Chichoro Mwanjembe on the 27th day of January 2012 in Taru Location, Kwale County intentional and unlawfully caused his penis to penetrate the vagina of UJ a girl aged 9 years.
3. The Applicants appeals to the High Court in CR. Appeal No. XX of 2013 and Court of Appeal No. XX of 2015 were both dismissed and the Court of Appeal enhanced sentence from 25 years to Life Imprisonment.
4. The Applicant now seeks that this Court intervene under article 23 and 165 of *the Constitution* of Kenya 2010 by reviewing his sentence. The Applicant in the supporting affidavit has averred that his elderly mother, his wife & 4 children are undergoing severe hardship as a result of his sentence.
5. The Application is supported by the holding in High Court at Machakos Constitutional Relation No. E017 of 2021 where Odunga J (as he then was held) that all Sexual Offenders who are convicted and sentenced under mandatory minimum penal laws are deserving to have their mitigation taken into account in their sentences and that courts have discretion to impose sentences that befit the offences committed.



6. This court has considered the application and the decision in *Juma Mohamed Ngazi vs DPP* (2021) eKLR where Ogola J held:-

“ Taking all these factors into consideration my view is that the aggravating factors outweighed the mitigating factors. This court must send out a clear warning to would be offenders that once found guilty they shall adequately be punished. In this matter the manner in which the crime was committed was so cruel and so offensive and the court appeal in cognizant of the same enhance sentence from 25 years to life imprisonment”.

7. However, in the Court of Appeal at Malindi in Manyeso Kitsao case it was held that life imprisonment is unconstitutional. This court is therefore mandated in the circumstances to set aside life sentence imposed upon the applicant and determine appropriate sentence other than life imprisonment.

8. The Applicant preyed on a 9 years old child in broad day light wrestled her to the ground and defiled her and thereafter left her alone when she had lost her memory. The Applicant committed a serious crime that made the Court of Appeal enhance his sentence to Life Imprisonment. The applicant therefore deserves severe punishment that would send the right warning to would be defilers that crime if proved will be punished severely.

9. This court finds that the appropriate punishment for the applicant is 30 years imprisonment – to substitute life imprisonment imposed by Court of Appeal.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,

THIS 19TH DAY OF JANUARY 2024

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia - Court Assistant

Mr. Ngiri for the Respondent

Applicant- Present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

