



**Nyamai v Republic (Miscellaneous Criminal Application  
E167 of 2023) [2024] KEHC 224 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 224 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E167 OF 2023**

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

**BETWEEN**

**OSCAR MUSUA NYAMAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Oscar Musua Nyamai was convicted and sentenced to life imprisonment in Mombasa CMC Criminal Case No. 743 of 2014 for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*.
2. The particulars were that on 21<sup>st</sup> day of March 2013 at Kidunguni Area in Likoni District within Mombasa County, he intentionally caused his penis to penetrate the anus of AG a child aged 4 ½ years.
3. His appeal in High Court Criminal Appeal No. 56 of 2015 was dismissed, conviction and sentence were upheld. The applicant now seeks that his life imprisonment be reviewed pursuant to the holding in Philip Mueke Maingi & 5 Others v Republic in Machakos High Court Petition No. E017 of 2021 where it was held that the mandatory minimum sentences in sexual offences was unconstitutional.
4. In consideration of the precedence in Philip Mueke Maingi and 5 Others v Republic and Julius Kitsao Manyeso v Republic, this court hereby sets aside the life sentence and substitutes thereof with 30 years imprisonment to take effect from 17<sup>th</sup> April 2014 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: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

