



**Omari v Republic (Miscellaneous Criminal Application  
E048 of 2023) [2024] KEHC 2597 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2597 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS CRIMINAL APPLICATION E048 OF 2023**

**TA ODERA, J**

**MARCH 7, 2024**

**BETWEEN**

**AUGUSTINE OMARI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Augustine Omari the applicant herein filed application dated 5.6.2023 seeking review of his sentence of 30 years for the offence of defilement of a child aged 4 years. “He appealed *vide* Kisii High court criminal appeal no. 41 of 2019. ([Augustine Omari v Republic](#) [2019] eKLR) where Hon. Justice Majanja held that;

“I am aware that the Court of Appeal has, in several cases, declared that the mandatory sentences under the Act are unconstitutional. In *Christopher Ochieng v Republic* KSM CA Criminal Appeal no. 202 of 2011 [2018] eKLR, the Court of Appeal held that:

In this case, the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by Section 8 (1) of the Sexual Offences Act, and if the reasoning in the Supreme Court case was applied to this provision, it too should be considered unconstitutional on the same basis. .... Needless to say, pursuant to the Supreme Court’s decision in *Francis Karioko Muruatetu & another v Republic* (supra), we would set aside the sentence for life imprisonment imposed and substitute it therefore with a sentence of 30 years’ imprisonment from the date of sentence by the trial court.

2. In the circumstances, I find that the life imprisonment meted upon the appellant was excessive and cannot stand given the circumstances of the case. I therefore substitute the term of life imprisonment



with an imprisonment for a term of thirty (30) years to run from the date of conviction before the trial court.”

3. It is clear that the sentence of the applicant was already reviewed to 30 years by Hon. Justice Majanja a Judge of the High Court who also considered the Muruatetu case. This court has no jurisdiction to review orders of a Court of Concurrent jurisdiction.

The application is dismissed.

**T.A ODERA**

**JUDGE**

**7.3 .24**

Delivered Virtually via teams platform in the presence of;

Applicant in person

Mr Koima Prosecution Counsel

Oigo – Court assistant

