



**Koros v Republic (Miscellaneous Criminal Application
E061 of 2023) [2024] KEHC 5294 (KLR) (21 May 2024) (Revision)**

Neutral citation: [2024] KEHC 5294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CRIMINAL APPLICATION E061 OF 2023**

JK SERGON, J

MAY 21, 2024

BETWEEN

VINCENT KIPKURUI KOROS APPLICANT

AND

REPUBLIC RESPONDENT

REVISION

1. Vincent Kipkurui Koros, the applicant herein, is before this court seeking for a sentence Review vide the application dated July 24, 2023.
2. In the aforesaid application, the applicant averred that he was tried before the Senior Resident Magistrate’s Court, Kericho on a charge of Defilement Contrary to section 8 (1) as read with section 8(2) of the *Sexual Offences Act* No.3 of 2006 *vide* Kericho SRM’s Criminal Case No.29 of 2016. The Applicant further averred that at the conclusion of the trial, he was convicted and sentenced to serve life imprisonment. He also stated that he preferred an appeal before this court. The appeal was heard and dismissed by the High Court. Being aggrieved further, the applicant filed an appeal before the Court of Appeal and sought to upset the dismissal order pronounced by the High Court.
3. When the instant Application came up for hearing, the applicant informed this Court that he had filed a Notice of Withdrawal of the Appeal before the Court of Appeal.
4. The applicant urged this Court to find that the life imprisonment imposed against him is indeterminate and unconstitutional and therefore amendable to being reviewed, set aside and substituted by a definite sentence.
5. Mr. Musyoki, learned Senior Assistant Director of Public Prosecutions urged this Court to determine the merits of the Application in view of the fact that the appellant had withdrawn the Appeal which was pending before the Court of appeal.



6. It is not in dispute that the Applicant was convicted and sentenced to serve life imprisonment. It is also not in dispute that life imprisonment is an indeterminate sentence. In the case of *Julius Kitsao Manyeso v Republic* – Malindi Cr. Appeal No.12 of 2021 held inter alia as follows:

“We are equally guided by this holding by the Supreme Court of Kenya, and in the instant appeal, we are of the view that having found the sentence of life imprisonment to be unconstitutional, we have the discretion to interfere with the said sentence.....”

“We are therefore of the view that while the Appellant should be given the opportunity for rehabilitation, he also merits a deterrent sentence. We therefore in the circumstance, uphold the Applicant’s conviction of defilement but partially allow his appeal on sentence.

We accordingly set aside the sentence of life imprisonment imposed on the Appellant and substitute thereof with a sentence of 40 years imprisonment.”

7. It is clear that in view of the above decision that this Court has the discretion to entertain the instant application. The decision of the Court of Appeal i.e *Julius Kitsao Manyeso v Republic* (*supra*) has been challenged on appeal before the Supreme Court of Kenya, but the appeal is yet to be heard and determined. Therefore by virtue of the doctrine of stare decisis, I am bound by the decision. In the end, I find that the life sentence imposed upon the Applicant, is indeterminate and discriminative. The same is contrary to the Principle of equality before the law Under article 27 of the *Constitution of Kenya*, 2010.

8. In the case of *Evans Nyamari Ayako v Republic*, Kisumu Criminal Appeal No.22 of 2018, the Court of appeal stated inter alia as follows:-

The only concern we have is whether an indefinite life imprisonment sentence is constitutional and can be justified given the emerging norms of human decency and human rights reflected in our emerging jurisprudence. This emerging jurisprudence is a product of a purposive reading of articles 27 and 28 of our *Constitution* as applied to sentencing. On our part, we are in agreement that an indeterminate life sentence falls afoul the provisions of article 27 and 28 of our *Constitution* purposively interpreted”.

On our part, considering this comparative jurisprudence and the prevailing socio-economic conditions in Kenya, we come to the considered conclusion that life imprisonment in Kenya does not mean the natural life of the convict. Instead, we now hold that life imprisonment translates to thirty years imprisonment.”

9. The record shows that the applicant was held in custody from March 11, 2015 and was admitted to bond/bail on 1March 8, 2016. It is apparent he spent 1 year in custody which period should be taken into account while sentencing pursuant to the Provision of section 333(2) of the *Criminal Procedure Code*.

10. I am satisfied that the sentence of Life Imprisonment should be reviewed set aside and substituted with a definite sentence. Looking at the severity of the offence, I find that a sentence of 30 years imprisonment is appropriate in the circumstances. The victim was a child aged 7 ½ years at the time of the offence.

11. Consequently, the life sentence is set aside and is substituted with a sentence of 30 years imprisonment. The time spent in custody of 1 year should be subtracted from the 30 years now imposed. Therefore, the sentence of 29 years should run from the date of sentence i.e from April 13, 2022.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 21ST DAY OF MAY, 2024.



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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor – Miss Chomba

Applicant – Present in Person

