



**Mwaniki v Republic (Criminal Revision E0311 of 2023)  
[2024] KEHC 10576 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 10576 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E0311 OF 2023  
CJ KENDAGOR, J  
JUNE 21, 2024**

**BETWEEN**

**WILSON MWANIKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant via the undated motion forwarded on 7<sup>th</sup> June, 2023, has applied to this Court for review of sentence under Article 50 (2) of the [Constitution](#) of Kenya and Sections 362 and 364 of the [Criminal Procedure Code](#).
2. The application for review was made after the Judgment by Hon. S. Chirchir, Judge in the High Court of Kenya at Murang'a Criminal Appeal, delivered on 31<sup>st</sup> May 2023. The Appeal was filed by the Applicant against the Judgment of the Chief Magistrate's Court at Murang'a in Sexual Offence Case No. 11 of 2005, delivered by Hon. E Nyaga on 13<sup>th</sup> May, 2021.
3. The appeal was against the conviction on the offense of incest contrary to Section 20 (1) of the [Sexual Offences Act](#). The Appellate Court upheld the conviction and the sentence of life imprisonment meted out by the trial magistrate.
4. Parties disposed of the application for review by way of written submissions and highlighting was done on 5<sup>th</sup> June, 2023.
5. The Applicant asked the court to consider his mitigation and review the sentence. He submitted that the mandatory and indeterminate sentence of life imprisonment without any prospect of release or a possibility of review is discriminatory, inhuman, and a violation of the right to human dignity.
6. The Applicant in his submissions, asked the court to consider the recent developments in law and relied on the case of [Julius Kitsao Manyeso vs. Republic](#) [2023] KECA 827 where the Court of Appeal



sitting in Malindi held that an indeterminate life sentence is unconstitutional. He further relied on the decisions of *Francis Muruatetu & Another vs Republic; Katiba Institute & Others* 2019 eKLR, *Evans Wanjala Wanyonyi vs. Republic* (2019) eKLR and *Jared Koita Injiri vs. Republic* Kisumu in Criminal Appeal No. 93 of 2014 on the court's determination of mandatory sentences being unconstitutional.

7. The Respondent submitted that this court lacks jurisdiction to review the sentence as a court of similar jurisdiction had already pronounced itself on the issue of sentencing. The Respondent further submitted that the sentence was passed with due consideration of all factors in sentencing.
8. The issue for determination is whether the court can review the sentence imposed on the applicant.

## **Jurisdiction**

9. Article 50(2) of the *Constitution* gives the right to every accused person of a fair trial which includes: -
  - (q). "If convicted, to appeal to, or to apply for review by, a higher court as prescribed by law."
10. Section 362 of the *Criminal Procedure Code* makes provision for revision; -

"Power of High Court to call for records The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court. 364 (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed."
11. Whereas the Applicant did not challenge the sentence imposed, the appellate court in Murang'a High Court Criminal Appeal E008 of 2021 examined its fidelity and thus dealt with the issue of the sentence on appeal. The authorities relied on by the applicant are therefore not applicable in the circumstances.
12. The foregoing provisions of the *Criminal Procedure Code* rule out the intervention of the High Court to review the orders of another judge in a criminal case. The powers of the High Court on Revision are to be exercised only over subordinate courts and not over the High Court concerning its own decisions.
13. Under Article 50 (2) (q), where an accused person is aggrieved by the court's decision, he may either appeal or seek a sentence review. In this regard, a convicted person cannot appeal and at the same time seek a review.

I am guided by the decision of Justice Joel Ngugi (as he then was) in *John Kagunda Kariuki vs. Republic* [2019] eKLR where the Learned Judge held thus:-

- " 10. In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal...."
14. The High Court affirmed the decision of the Subordinate Court on sentence. The applicant has not exhausted the avenues provided for in law, the appropriate court he should approach is the Court of Appeal.
15. This court declines the application for revision for reduced sentence.



16. While determining this revision, I addressed myself regarding the indeterminate life sentence which the Court of Appeal has declared unconstitutional.

In *Manyeso vs. Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment), the Court of Appeal sitting in Malindi Nyamweya, Lesiit and Odunga, JJA) held that life imprisonment unconstitutional substituted the same with 40 years. They stated as follows: -

“We recognize that although the Judiciary released elaborate and comprehensive Sentencing Policy Guidelines in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in agreement with the High Court decision in Jackson Wangui, supra, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature...

... 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 circumstances, uphold the appellant’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 therefor a sentence of 40 years in prison to run from the date of his conviction.”

17. In *Ayako vs. Republic* (Criminal Appeal 22 of 2018) [2023] KECA 1563 (KLR) (Okwengu, Omondi & J. Ngugi, JJA) (8 December 2023) (Judgment) translated life imprisonment to 30 years. They stated as follows:-

“26. 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, life imprisonment translates to thirty years’ imprisonment.

27. In the circumstances of this case, given the objective severity of the offence committed by the appellant as analysed above, we hereby allow the appeal on sentence to the extent of ordering that the sentence of life imprisonment imposed shall translate to 30 years’ imprisonment. The record shows that the appellant was in custody since he was arraigned in court on July 18, 2011. By dint of section 333(2) of the *Criminal Procedure Code*, the imprisonment term of 30 years shall be computed to begin running from that date.”

18. The upshot of the above is that life imprisonment is not left indeterminate.

19. I have considered the lower court proceedings, the applicant’s age and submissions on record. The life imprisonment sentence imposed on the Applicant is hereby translated into 30 years.

20. I therefore substitute the life sentence, with its equivalent, that is 30 years. The period shall run as per Section 333 (2) of the *Criminal Procedure Code* from 4<sup>th</sup> September 2019 when the Applicant was remanded in custody.

21. It is so ordered.

**DELIVERED, DATED, AND SIGNED AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF JUNE 2024.**

**HON. C. KENDAGOR**



## **JUDGE**

Ruling delivered through the Microsoft Teams online platform in the presence of:

Court Assistant: Hellen

ODPP: Mr. Oduor

Applicant: Wilson Mwaniki

