



**Chelego v Republic (Criminal Revision E028 of 2024)
[2024] KEHC 8405 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E028 OF 2024
RB NGETICH, J
JULY 10, 2024**

BETWEEN

KENNEDY CHELEGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of incest of a child aged 3½ years contrary to section 20(1) of the *Sexual offences Act* No.3 of 2006 in Kabarnet principal magistrates court case No. 735 of 2009 and sentenced to life imprisonment. He has now filed application seeking revision of sentence. He states that he has been in prison for 15 years.
2. He has now filed notice of motion application seeking revision of sentence arguing that under Article 50(2)(p)(q) of *the constitution*, he has a right to benefit from the least severe sentence and have his sentence reviewed. The applicant avers that the life sentence contravenes section 216 and 389 of the *Criminal Procedure Code* on mitigation and the values of sentencing as in the Sentencing Policy guidelines 2016 at paragraph 4:1 and avers that this court has competent jurisdiction to hear and determine this application under Article 165(3)(b) of *the Constitution* of Kenya,2010.
3. The applicant further avers that his appeal to the High court was dismissed and he has filed appeal to the Court of Appeal but he is ready to withdraw the same so as to pursue this application.
4. When the matter came up for hearing on the 8th May,2024, the Applicant stated that he is praying for determinate sentence and while in prison, he has acquired life skills in Tailoring and carpentry.
5. The prosecution counsel Ms. Ratemo urged this court to call for social inquiry report to be filed. The report was filed on the 6th May,2024.



Response By State

6. On the 11th June, 2024, the prosecution counsel Ms. Ratemo submitted that the applicant was sentenced to serve life imprisonment and in light of the Court of Appeal decision, she will not oppose the revision of sentence to determinate sentence and urged this court to consider that the victim was a daughter of the Applicant.

Social Inquiry Report

7. From the social inquiry report, the accused is aged 42 years old and he is a first-time offender who has been in custody for the last 15 years. During this period, he has acquired a skill in Carpentry and Tailoring and he was able to do examination and has obtained grade one certificates. The victim is a child to applicant's brother and the brother's view is that if the applicant is released, he should not resettle at ancestral land but relocate to Eldama Ravine since his daughters do not want to see him. During the interview, the applicant's brother did not want the officers to speak to the victims. The brother-in-law prayed for his early release or his sentence reduced so that he can re-start his life afresh and he is willing to facilitate his re-integration and supervision within the community.
8. From the report, the applicant has been in prison for 15 years and has been able to learn Carpentry up to grade one and tailoring up to grade one. He admits the offence and attribute it to influence of alcohol and bhang and says it was his first time to take alcohol and drugs.
9. The victim's father said his daughter is currently a form two student at Tiriondonin Day Secondary School and doing very well with her studies. He says the daughter is aware and is opposed to applicant's prayers and does not want to see the applicant.
10. The local administration and the village elder stated that the applicant's family who include his mother are willing to accept him back and the local administration are willing to facilitate his supervision and rehabilitation within the community. The local administration however confirmed that the victim's father is opposed the inmate's early release due to the fact that he is currently cultivating the inmate's land and a few of his sons have already built houses there.

Determination

11. The application herein invokes the revisional jurisdiction of this court as provided under Article 165 (6) of *the constitution* and section 362 as read with section 364 of the *Criminal Procedure Code*. The provisions give this court powers in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law.
12. Further, this court has jurisdiction to entertain matters of resentencing as donated to it by recent jurisprudence, particularly in the Court of Appeal decision in the case of *Julius Kitsao Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023). In this case, it was held thus:

“...we are of the view that the reasoning in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation.



This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of *the Constitution*”.

13. In the above case the court of appeal declared life sentence unconstitutional. In view of the above, the applicant has a right to have the life imprisonment sentence imposed against him reviewed to have determinate sentence. Further, in the case of *Evans Nyamari Ayako v Republic* Criminal Appeal No. 22 of 2018 the court of appeal defined life imprisonment sentence to mean 30 years imprisonment. The court stated as follows: -

“This qualitative survey of how different jurisdictions have treated life imprisonment in the recent past provides objective indicia of the emerging consensus that life imprisonment is seen as being antithetical to the constitutional value of human dignity and as being inhuman and degrading because of its indefiniteness and the definitional impossibility that the inmate would ever be released. This emerging consensus of the civilized world community, while not controlling our outcome, provides respected and significant confirmation for our own conclusion that life imprisonment is cruel and degrading treatment owing to its indefiniteness. 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.”

14. I have considered the circumstances of the case. I take note of the fact that the applicant defiled his brother’s child who was aged 3½ years. The girl has not healed, she is still traumatized and does not want to see the applicant. From the report, the victim’s sisters do not also want to see the applicant. In view of the above, it will not be in the interest of justice to allow the applicant to serve non-custodial sentence. However, in view of the above decisions of the superior courts in respect to life sentence, I am inclined to set aside life sentence and imposed deterrent determinate sentence. I hereby set aside life sentence and impose 30 years imprisonment.

15. Final orders:

1. Life sentence set aside.
2. Applicant to serve 30 years imprisonment.
3. Period served in remand from the date of arrest and the prison he served in prison to be computed in sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 10TH DAY OF JULY 2024.

RACHEL NGETICH

JUDGE

In the presence of

CA Elvis/Komen.

Ms. Ratemo for State.

Applicant present.

