



**JYK v Republic (Criminal Revision E032 of 2024)
[2024] KEHC 8260 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E032 OF 2024
RB NGETICH, J
JULY 10, 2024**

BETWEEN

JYK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of incest of children aged 10 and 12 years. He was acquitted in one and was sentenced to serve life imprisonment on the other.
2. The applicant avers that he has been in prison for 13 years and that while in prison, he has learnt tailoring grade 1. He now prays for a determinate sentence.

Response From State

3. The prosecution counsel Ms. Ratemo prayed for social inquiry report to be filed to assist the court in determining the appropriate sentence. The report was filed on the 8th May, 2024.

Social Inquiry Report

4. From the report, the applicant's parents died due to old age. He is the only person in the family with criminal history. His brother indicated that the applicant was of good character and that he committed the offence due to alcohol influence. He prayed for applicant to be granted non-custodial sentence and said he is willing to facilitate his reintegration and supervision within the community.
5. From the report, the applicant is 56 years old and before his arrest, he operated electronic shop in Mogotio. He is married to 2 wives and blessed with 5 children. He blames influence of alcohol for commission of the offence. He admits the offence and prays for sentence to be revised to determinate



sentence or non-custodial sentence. He said he has been in prison for 14 years and has acquired skills in tailoring grade one.

6. Efforts to reach out to the victim were futile. The local administration indicated that the victim is currently married and she is a student at Kabarak University under the sponsorship of World Vision. They indicate that the applicant committed the offence under the influence of alcohol.
7. From the report the two victims who are Applicant's daughters are both married and his last-born son is in high school and the children have been receiving help through CDF and community harambee and sponsorship from World Vision to finance their education and upkeep. They are not opposed the applicant's prayer of his sentence to be revised to determinate sentence or granted non-custodial sentence as he has been in custody for a long period. The family and local administration are willing to facilitate his supervision and re-integration within the community.
8. From the report, the applicant has been in custody for the last 13 years. His main prayer is to be granted determinate sentence or non-custodial sentence. While in custody, his efforts to reach out to the victim 'were futile; the inmate's siblings together with the local administration did not opposed the inmate's prayers stating that he committed the offence under the influence of alcohol.

Determination

9. 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* court. 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.
10. This court has jurisdiction to consider resentence following 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*”.
11. Further, the Court of Appeal sitting in Kisumu rendered itself on 08th December 2023 in the case of Evans Nyamari *Ayako v. Republic* Criminal Appeal No. 22 of 2018 defining the life imprisonment sentence to mean 30 years imprisonment. It was held thus:-

“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.”

12. In view of the above, the applicant is entitled to benefit from change of jurisprudence by being granted determinate sentence. I have considered circumstances surrounding the offence herein and the fact that the two victims herein who are applicant's daughters have decided to forgive him. I have also considered the views from the family member and local administration and the seriousness of the offence nothing that the victims were aged 10 and 12 years though he was acquitted on one count. In view of the above, I am inclined to set aside life sentence and impose 25 years imprisonment.

13.

Final Orders: -

1. Life imprisonment is hereby set aside.
2. The applicant to served 25 years imprisonment.
3. Period served in remand from date of arrest and prison to be computed in the sentence in 2 above.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET This 10th Day of July 2024.

RACHEL NGETICH

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of:

CA Elvis/Komen.

Applicant present.

Ms. Ratemo for State.

