



**MK v Republic (Criminal Revision E030 of 2024)
[2024] KEHC 8409 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E030 OF 2024
RB NGETICH, J
JULY 10, 2024**

BETWEEN

MK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of incest by male person contrary to section 20(1) of the [Sexual offences Act](#) No. 3 of 2006. The particulars of the charge were that the applicant on the month of April,2012 on 23rd in Kabartonjo District within Baringo County did intentionally and unlawfully caused his penis to penetrate the vagina of VMC a child aged 7 years a child he knew to be his daughter in violation of the said Act.
2. The applicant denied the charge culminating in the matter being set down for full trial and by judgment delivered on 20th June,2012 the trial court found the applicant guilty, convicted and sentenced him to serve life imprisonment.
3. The applicant has now approached this court seeking revision of sentence. On the 2nd May, 2024 when the matter came up for hearing, the Applicant stated that his prayer is to be granted a determinate sentence. He stated that he has been in prison for 12 years.
4. The Applicant informed the court that he filed an appeal to the High court in Eldoret High court vide Eldoret HCCRA No. 116 of 2012 which was concluded in 2019 with the appeal being dismissed and he filed an appeal to the Court of Appeal which was also dismissed. He stated that while in prison, he has learnt upholstery Grade 1 and he has also done biblical trainings.



Response By State

5. The prosecution counsel Ms. Ratemo urged this court to call for social inquiry report and for applicant to avail certificates for the courses he has trained in prison while in prison. On the 11th June, 2024, Ms. Ratemo informed the court that upon perusing social inquiry report, she was not opposed to life sentence being reviewed to a determinate sentence but urged the court to consider that the child defiled was of tender years and was the applicants daughter.

Social Inquiry Report

6. The social inquiry report indicate that applicant is aged 41 years old and had a formal education up to standard eight when dropped out in the year 2001 due to family financial constraints and started doing casual jobs within the community. He married in the year 2009 but separated with his wife the same year. The applicant is blessed with one child who is currently with the mother. He has been in prison for a period of 12 years and during this period, he has trained in upholstery and religious education on bible lime and life. He attributes the offence to influence of alcohol.
7. The applicant has 3 siblings. The inmate's aunt indicated that the applicant had been of good character and that he committed the offence under the influence of alcohol. She is not opposed to applicant's sentence being reduced and she is willing to facilitate his reintegration within the community and supervision. She said the inmate's mother is currently very sick and she has a hearing problem. The applicant's brother shares same view and says if applicant is released, he will assist him financially in education of her daughter. Efforts to reach out to the applicant's father were futile as he was currently serving a custodial sentence for offence of possession of alcoholic drinks at Nakuru Prison.
8. The victim is a form one student at [Particulars Withheld] Secondary school. She is currently under the custody of his uncle the applicant's brother. She is not opposed to her father's sentence being reviewed for reason that he will assist in financing her education as her uncle currently is overwhelmed. She said she has already forgiven her father.
9. The local administration indicated that the applicant was of good character and may have committed the offence under the influence of alcohol. They are not opposed to the applicant's sentence being reduced or granted community rehabilitation. The probation officer's report is that home environment is conducive and he is suitable for sentence review but this being a sexual offence matter, they leave the matter to courts discretion.

Determination

10. 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.
11. In the case of *Julius Kitsao Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023), the court of appeal stated as follows:-

“...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”.

12. The court of appeal in the above case declared life sentence unconstitutional. 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. The court held 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.”

13. In view of the above, the applicant has a right to have sentence of life imprisonment reviewed so as to impose determinate sentence.
14. I have considered the circumstances of this case and more particularly the fact that the victim was aged 8 years and is the applicant’s daughter who looked up to him for protection but instead, the applicant abused trust bestowed upon him and abused his own child by defiling her. Despite the fact that the victim herein confirmed that she has forgiven her father, there is no doubt that the experience will traumatize her for the rest of her life time. In view of the above, I am inclined to impose determinate deterrent sentence. I am inclined to impose 25 years imprisonment.
15. Final orders: -
1. Life sentence is hereby set aside.
 2. Applicant to serve 25 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.

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RACHEL NGETICH
JUDGE

In the presence of:
CA Elvis.
Ms. Ratemo for State.



Applicant present.

