



**Manyasi v Republic (Criminal Revision E017 of 2024)
[2024] KEHC 10520 (KLR) (2 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10520 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E017 OF 2024**

**A MSHILA, J
AUGUST 2, 2024**

BETWEEN

SAMUEL KOMBA MANYASI APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. A brief outline of the case was that the Applicant was charged with the offence of Defilement Contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#). The particulars of the offence are that on diverse dates between 27th August, 2011 and September, 2011 at (Particulars withheld) Village in Kiambu County the Applicant unlawfully and intentionally committed an act which caused penetration with his genital organ (penis) into the genital organ (vagina) of BWM a child aged seven (7) years. The alternative charge was committing an Indecent Act with a child aged seven (7) years c/s to Section 11(1) of the same [Act](#). The particulars are the same save for the fact that there was touching as opposed to penetration.
2. The Applicant was convicted and was sentenced accordingly for Defilement; the provisions of Section 8(2) of the [Sexual Offences Act](#) imposes a mandatory life sentence for the offence.
3. The Applicant having exhausted all the channels of appeal has now moved this court by way of an application for revision as opposed to a Petition for resentencing under the guidelines made by the Court of Appeal in the Mombasa Petition No.97 of 2021 [Manyeso v Republic](#) case; in this instant application the applicant is seeking the following prayers;
 - i. An order for revision of the life sentence imposed on the grounds that it is indeterminate and inhumane.
 - ii. An order for revision of the sentence to commence from the date of arrest.



4. At the hearing hereof the Applicant was unrepresented and relied on his affidavit; whereas the Respondent was represented by Prosecuting Counsel Mr. Gacharia ; hereunder are the parties short submissions.

Applicant's Case

5. The Applicant prayed to be granted a definite and lenient sentence; and also prayed that the period spent in remand be taken into consideration pursuant to the provisions of Section 333(2) of the [Criminal Procedure Code](#);
6. He had been arrested on 5/10/2011 and sentenced on 29/08/2012 which is a period of eleven (11) months spent in custody from the time of his arrest;

Respondent's Case

7. The State was not opposed to the application but requested that the Kiambu lower court record and a Victim Impact Report be availed to assist this court in making its decision in determining the appropriate sentence to be considered.

Issues For Determination

8. After hearing the submissions this court has framed the following issues for determination is as follows;
 - i. Whether the Applicant is deserving of a resentencing of his sentence.
 - ii. Whether the Applicant was deserving of the benefits of Section 333(2) of the [Criminal Procedure Code](#).

Analysis

Whether the Applicant is deserving of a resentencing of his sentence

9. The Court of Appeal in the Manyeso (*supra*) case declared the mandatory life sentence to be unconstitutional and persons so convicted were at liberty and entitled to petition the High Court for re-sentencing under the provisions of Article 50(2)(p) and (q) of the [Constitution](#) 2010; in line with the decision this court has the mandate to grant alternate sentences after taking into consideration various mitigating factors;
10. This court in order to render substantive justice will overlook the fact that the applicant has filed an application for revision as opposed to a Petition and will invoke the provisions of Article 159(2) of the [Constitution](#) to ensure that the administration of justice is done without undue regard to procedural technicalities.
11. It is this court's view that when considering to review the sentence it must take into consideration the following factors; firstly, the gravity of the offence and its prevalence; secondly, the facts and circumstances of the case and whether the applicant is repentant and genuinely remorseful for the unlawful act.
12. This court has carefully considered the facts of the case, the gravity of the offence, gravity and prevalence of such offences, also the fact that the applicant executed the offence repetitively on an innocent child aged seven (7) years, and the scars the incidents left on the victim.
13. Indeed, the applicant realizes the gravity of the offence he committed and he is sorry and has demonstrated genuine remorse for what he did; the aggravating circumstances are found to far



outweigh the applicants' mitigating factors; this court is of the considered view that although the review of life sentence is merited on the grounds of the unconstitutionality of the sentence, there is a need to still impose a custodial sentence that will also act as a deterrent to others who may be tempted to commit similar offences.

14. This court is satisfied that in line with the Manyeso (*supra*) case the applicant is deserving of a reduction of the unconstitutional life sentence imposed; which sentence is substituted with a custodial sentence of thirty (30) years.

Whether the Applicant was deserving of the benefits of Section 333(2) of the [Criminal Procedure Code](#).

15. The [Judiciary Sentencing Policy Guidelines \(2014\)](#) provides guidance on this issue as follows:

“The proviso to section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

16. Since the sentence imposed was a mandatory life sentence none of the courts from the trial court to the appellate courts had reason to address this issue so this court is obligated to address it.
17. The court record establishes that the Applicant had been arrested on 5/10/2011 and sentenced on 29/08/2012 which translates to a period of eleven (11) months spent in custody from the date of his arrest.
18. Taking into consideration these facts and the sentencing guiding principles outlined above, this court is satisfied that the applicant is entitled to the benefits of Sec 333(2) of the [Criminal procedure Code](#).
19. The Applicant shall serve 30 years imprisonment less the period spent in custody of eleven (11) months.

Findings And Determination

20. For the forgoing reasons this court finds that the application for re-sentencing is meritorious; and finds the most appropriate sentence for the offence committed to be a custodial term of thirty (30) years;
21. This court finds that the applicant is entitled to the benefit of Section 333(2) of the [Criminal Procedure Code](#).
22. The eleven (11) months spent in remand be deducted from the sentence imposed of thirty (30) years.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 2ND DAY OF AUGUST, 2024.

A.MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant



Gacharia – For the State

Samuel - present from Kamiti

