



**Cheptoo v Republic (Petition E062 of 2021)**  
**[2024] KEHC 10994 (KLR) (20 September 2024) (Resentence)**

Neutral citation: [2024] KEHC 10994 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**PETITION E062 OF 2021**  
**RN NYAKUNDI, J**  
**SEPTEMBER 20, 2024**

**BETWEEN**

**JEREMIAH KIPROTICH CHEPTOO ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RESENTENCE**

1. The Petitioner is before this court for resentencing. The Petitioner was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, No. 3 of 2006. The applicant pleaded not guilty, was tried, convicted and sentenced to serve life imprisonment.
2. According to the Petitioner, there is emerging jurisprudence in Francis Karioko Muruatetu and Another vs Republic SC Pet. No. 15 of 2015 where the supreme held that the mandatory death sentence prescribed for the offence of murder.
3. The petitioner further stated that the court ought to consider the principles underlying sentencing as set out in the Judiciary Sentencing guidelines. Particularly, the Petitioner made mention of the principles of proportionality and deterrence.

**Analysis and determination.**

4. I have considered the application and the mitigation submissions by the applicant. The issue manifest for determination is whether the sentence review is merited.
5. A glimpse of the Petitioner’s application clearly calls for a re-hearing of the sentence imposed. Article 50 (2) (p) of *the constitution* provides as follows:

Every accused person has the right to a fair trial, which includes the right—



- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and"
6. Article 50(6) further provides for conditions under which one can petition for a new trial, which in this case is a new trial only on sentence. The provision speaks in the following terms.
- (6) A person who is convicted of a criminal offence may petition the high court for a new trial if: -
- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
  - b. New and compelling evidence has become available.
7. The foregoing provisions are instructive in matters brought before the high court for a new trial. The application before me seeks a new trial only on sentence. So that then my mandate is to view the application through the lens of Article 50 (2)(p) and (6) and determine whether the same is proper for a new trial only on sentence.
8. The Court of Appeal in the case of Julius Kitsao *Manyeso v Republic Malindi Criminal Appeal No. 12 of 2021*, when considering the issue of indeterminate sentences, particularly life imprisonment, delivered itself thus:

“We note that the decisions of this Court relied on by the Appellant, namely Evans Wanjala Wanyonyi v Rep [2019] eKLR and Jared Koita Injiri v Republic Kisumu Crim. App *No 93 of 2014* were decided before the Supreme Court clarified the application of its decision in Francis Karioko Muruatetu & another v Republic [2021] eKLR and limited its finding of unconstitutionality of mandatory sentences to mandatory death sentences imposed on murder convicts pursuant to section 204 of the Penal Code. This fact notwithstanding, 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, which is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of *the Constitution*. In addition, an indeterminate life sentence in our view also inhumane treatment and violates the right to dignity under Article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in Vinter and others vs The United Kingdom (Application nos. 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”

9. There are circumstances under which the court can alter or decline to vary the sentence meted out. That is entirely at the discretion of the court. I have gone through the record of the court's decision in the criminal trial, the judgment and sentence. I have noted the circumstances under which the offence was committed. I have also read the sentencing record of the court. I have always held the position that mitigation should count on something.



10. The offence of defilement contrary to the provisions of Section 8(1) and 8(2) attracts life imprisonment. I am of the considered view that life imprisonment is such indeterminate sentence that deprives one of humane treatment and courts are now embracing sentences that will achieve the objectives of sentencing. The Court of Appeal in the case of *Manyeso v Republic (Criminal Appeal 12 of 2021)* [2023] KECA 827 (KLR)

“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*. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application Nos 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.

11. In *R v Bieber* [2009] 1 WLR 223 the Court of Appeal of the United Kingdom had held as follows:

“The legitimate objects of imprisonment are punishment, deterrence, rehabilitation and protection of the public. Where a mandatory life sentence is imposed in respect of a crime, the possibility exists that all the objects of imprisonment may be achieved during the lifetime of the prisoner. He may have served a sufficient term to meet the requirements of punishment and deterrence and rehabilitation may have transformed him into a person who no longer poses any threat to a public. If, despite this, he will remain imprisoned for the rest of his life it is at least arguable that this is inhuman treatment...”

12. From the foregoing authorities, it is evident that mandatory sentences and particularly life imprisonment is unlawful. I form the opinion that life imprisonment in its nature is pegged on the accused's balance of years until death. It results to ambiguity for both the society and the accused person. Such indeterminacy undermines the goals of rehabilitation and is inconsistent with the principles of justice and fairness which are at the heart of our criminal justice system.

13. Having said so, I have considered The Sentencing Policy Guidelines, 2023 and its application which is intended to promote transparency, consistency and fairness in sentencing. The relevant considerations in the proceeding inter alia, are the penalty law, mitigating or aggravating factors, and the objects of punishments.

14. In *Dismas Wafula Kilwake v Republic* [2018] eKLR, the Court of Appeal set out the factors to be considered in sentencing under the Act. It observed as follows:

[W]e hold that the provisions of section 8 of the *Sexual Offences Act* must be interpreted so as not to take away the discretion of the court in sentencing. Those provisions are indicative of the seriousness with which the Legislature and the society take the offence of defilement. In appropriate cases therefore, the court, freely exercising its discretion in sentencing, should be able to impose any of the sentences prescribed, if the circumstances of the case so demand.



On the other hand, the court cannot be constrained by section 8 to impose the provided sentences if the circumstances do not demand it. The argument that mandatory sentences are justified because sometimes courts impose unreasonable or lenient sentences which do not deter commission of the particular offences is not convincing, granted the express right of appeal or revision available in the event of arbitrary or unreasonable exercise of discretion in sentencing.

15. Therefore, in sentencing, the gravity of the offence and the consequences of the offence on the victim are relevant factors. I have considered the application and all the information available. Given that mandatory sentences are now outlawed same as indeterminate sentences, I am inclined to interfere with the life sentence imposed and substitute it with a lesser sentence of 25 years' imprisonment. The application therefore succeeds and in considering the provisions of section 333(2) of the CPC the sentence shall run from the date of arrest.

**DATED AND SIGNED AT ELDORET THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**In the Presence of:**

**Petitioner**

**Mr. Mugun for the State**

.....

**R. NYAKUNDI**

**JUDGE**

