



**Kimosop v Republic (Criminal Revision E040 of 2024)
[2024] KEHC 12786 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12786 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E040 OF 2024
RB NGETICH, J
OCTOBER 17, 2024**

BETWEEN

BILLY KIPCHUMBA KIMOSOP APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Billy Kipchumba Kimosop filed notice of motion application dated 24th June, 2024 seeking revision of sentence of life imprisonment imposed against him for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *sexual offences Act* No.3 of 2006. He also urged this court to take into consideration time spent during trial as per the provisions of section 333(2) of the Criminal Procedure Code.
2. The application is premised on the following grounds that he appealed to the High court against both conviction and sentence vide HCCRA No.116 of 2009 at Eldoret High Court where his appeal was dismissed and has not appealed to the court of Appeal. He seeks review of sentence under the provisions of Article 50(2)(p) and (q) and states that he is remorseful of his past and pray for leniency and urges this court to impose determinate imprisonment term.
3. The applicant stated that he has taken advantage of the rehabilitation programs provided at the prison and is ready for re-integration to the society and the respondent will not be prejudiced if this application is allowed.
4. In his supporting affidavit, the applicant reiterates the grounds of his application before court and when the matter came up for hearing on 31st July, 2024, the Applicant informed the court that he was jailed to life imprisonment and his prayer is for the reduction of sentence.



Social Inquiry Report

5. From the social inquiry report filed, the Applicant dropped out of school in form 2 and at the time of his arrest, he was involved in casual labor within Orokwo to earn a living. The Applicant's sister indicated that as a family, they pray for setting aside of life sentence and the applicant be allowed to serve a definite sentence so that one day he can be released back into the society stating that the inmate was incarcerated at a very young age of 23 years and he has already spent 15 years in prison and as a family, they are ready to and willing to welcome him back home upon his release and assist in his reintegration back into the society.
6. The Applicant regrets his actions stating that he has learnt his lesson and he has sent his family members to seek forgiveness on his behalf from the victim and her family. He states that he has reformed and while in prison, he has done a course in counselling and obtained a certificate. He is a staunch catholic and is involved in sports where he assists the inmate-in charge of sports.
7. The victim's sister indicated that the victim was now an adult who was married in Marigat with 3 children and that she is a farmer doing contract farming under Kenya Seed and the husband is not aware of defilement as they chose not let him know; and it was difficult to get her sentiments as she was using her husband's phone. The sister indicated that as a family, they do not oppose revision of sentence.
8. The local administration described the applicant as being of good conduct prior to the offence herein. They are not opposed to revision of sentence as long as the family of the victim were okay with it. They confirmed that the victim has since been married and lives in Marigat with her husband and children.
9. The probation officer is of the view that the applicant's family, victim's family and the community at large are not opposed to the revision of sentence from a life sentence to a determinate sentence.

Determination

10. The application herein invokes the revisional jurisdiction of this court which gives the 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. The above is the import of Section 362 as read with Section 364 of the Criminal Procedure Code.
11. I take note of the fact that life sentence was declared unconstitutional by the court of appeal in the case of Julius Kitsao *Manyeso v Republic (Criminal Appeal 12 of 2021)* [2023] KECA 827 (KLR) (7 July 2023). 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 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.”

12. The applicant herein was sentenced to life imprisonment. He has been in prison for 15 years now. He stated that while in prison he has reformed. He prays for determinate sentence. I have considered sentiments by the applicant's and victim's family plus sentiments by local administration. I also take note of the fact that the applicant is remorseful and he took imprisonment positively and has taken steps to reform as demonstrated by his conduct in prison. The victim and community are not opposed to determinate sentence being imposed in place of life sentence. I also take note of the fact that the applicant has been in prison for 15 years now. In view of the above, I am inclined to impose determinate sentence and proceed to impose 25 years imprisonment.

13. Final Orders:-

1. Life sentence is hereby set aside.
2. Applicant is hereby sentenced to 25 years imprisonment.
3. Period served in remand and in prison to be computed in the sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 17TH DAY OF OCTOBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis – Court Assistant.

Accused present.

Ms. Omari for State.

