



**Lenguruiya v Republic (Criminal Miscellaneous Application
E002 of 2024) [2024] KEHC 13066 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13066 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARALAL
CRIMINAL MISCELLANEOUS APPLICATION E002 OF 2024
AK NDUNG’U, J
OCTOBER 11, 2024**

BETWEEN

BWASI LENGURUIYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of a Notice of Motion dated 8th October, 2024, the Applicant sought orders seeking revision of sentence following his conviction and sentence for defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No.3 of 2006 in Criminal Case No.70 of 2008 at Maralal Law Courts where he was sentenced to serve life imprisonment.
2. The application based on grounds that:-
 - a. The applicant herein appealed to the High Court at Nakuru vide Appeal No.61 of 2009 and the same was dismissed.
 - b. My second appeal to the court of Appeal at Nakuru vide KCA Appeal No.8 of 2012 was also dismissed in entirety hence the current petition on sentence revision only in this matter.
 - c. *The Constitution* provides that a convicted person is entitled to a less severe sentences if he is a first offender.
 - d. The court of Appeal of Kenya in Julius Kitsao Manyeso in Criminal Appeal No.12 of 2021 declared mandatory minimum sentences in the Sexual Offence Act unconstitutional.
 - e. He was only 15 years old at the time of commission of the offence.
 - f. The family has reconciled with the complainants family.
 - g. That he is Now a law abiding citizen



- h. He comes from a poor family background
 - i. He is remorseful that the offence occurred.
 - j. Given a chance he will not commit any crime as he has learnt a lesson.
 - k. The applicant has been in custody for 15 years since he was convicted and has taken advantage of the rehabilitation programs offered in prison.
 - l. The applicant herein cannot afford the fine he was given during conviction.
 - m. The complainant will not be prejudiced if the prayers sort herein are granted
 - n. He sought to be present during the hearing of this application
3. The application is supported by his affidavit filed herein and I note the copy on record is not dated.
 4. The application is opposed and it is urged by Mr. Mwongera appearing for the Respondent that this court has no jurisdiction to review the sentence and the Applicant's recourse should be at the Court of Appeal.
 5. It is common ground that the Applicant was sentenced to life imprisonment by the trial magistrate a sentence that was confirmed on appeal both at the High Court and at the Court of Appeal.
 6. A quick reading of the law informs that this application cannot be pegged on the revisionary powers of this court under section 362 of the Criminal Procedure Code and neither can it be possibly based on the supervisory jurisdiction of this court under Article 165(6) of *the Constitution*. The High Court and the Court of Appeal having pronounced themselves on the matter, this court has no supervisory jurisdiction on the two, the same being superior courts.
 7. In his submissions, the Applicant has attacked the mandatory nature of the sentence imposed on him basing his argument on the Muruatetu case. He has also rendered authorities from the Court of Appeal for the dicta that life imprisonment is unconstitutional.
 8. The Supreme Court in Muruatetu 2 clarified that the dicta in Muruatetu 1 on mandatory sentences only applied to the mandatory death sentence in murder cases. This court is bound by the decision of the Supreme Court and therefore, even assuming this Court had jurisdiction to entertain the Revision Application, in light of the Supreme Court decision, I am bound not to interfere with the sentence herein.
 9. With the result that the Application must fail. It is dismissed.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF OCTOBER 2024

A.K. NDUNG'U

JUDGE

