



**WOO v Republic (Criminal Petition E001 of 2023)  
[2023] KEHC 38 (KLR) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 38 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL PETITION E001 OF 2023  
RE ABURILI, J  
JANUARY 16, 2023**

**BETWEEN**

**WOO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for resentencing arising from conviction and sentence  
in Siaya CM SO Case No. 107/2014 and in Siaya HCCRA No. 152 of 2016)*

**RULING**

1. The applicant herein is WAO. He was convicted of the offence of incest contrary to section 20(1) of the *Sexual Offences Act* vide Siaya CM SO 107/2014 and sentenced to serve 20 years imprisonment. The victim of the offence was the convict’s own daughter aged 13 years old. He appealed to this court vide HCRA 152/2016 which was heard and determined on merit and dismissed on both conviction and sentence.
2. There is no indication as to whether the applicant/convict has appealed to the Court of Appeal or not but his application to file appeal as a pauper was dismissed for want of evidence of pauperism.
3. He now seeks for review of the 20 years imprisonment which he claims was the mandatory maximum imposed by Statute and only implemented by the trial court. He claims that the mandatory sentence imposed on him is unconstitutional and he relies on the provisions of articles 10, 20(1)(2), 23(1), 27, 28, 50(2)(9) of *the Constitution* and the decision of Odunga J (as he then was) vide Machakos HC Const. Petition No. E017 of 2021 delivered on 17/5/2022 where the learned Judge applying the principles espoused in *Francis Karioko Muruatetu & Another v Republic* [2017]eKLR held inter alia that the mandatoriness of sentences is unconstitutional as it deprives the trial court of the judicial discretion in sentencing and that it also denies the accused person the opportunity to mitigate so that an appropriate sentence is imposed on him, having regard to the circumstances of each case.



4. Without delving too much into the unsworn 'affidavit' of the applicant convict, I must first establish whether the 20 years imprisonment imposed on the convict herein is the mandatory sentence under the law. section 20 (1) of the *Sexual Offences Act* provides that a person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt, or grandmother is guilty of an offence term incest and is liable to imprisonment for a term of not less than ten years: provided that: if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.”
5. From the facts of the case, the convict herein committed incest with his own biological child a daughter aged 13 years old. The maximum sentence imposed by statute as reproduced above is life imprisonment.
6. The convict was sentenced to serve 20 years imprisonment and not life imprisonment. That sentence cannot be equated to life imprisonment as it was too lenient of the trial court and the High Court on appeal upheld it. The convict was given the opportunity to mitigate which he did and the court exercised discretion having regard to the circumstances of the case. I find no merit in the terse submission by the convict that he was sentenced to serve a prison term that is unconstitutional.
7. I find this application for resentencing not merited. The same is hereby found to be devoid of any merit, and is hereby dismissed.
8. This file is closed.
9. I so order.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 16<sup>TH</sup> DAY OF JANUARY, 2023.**

**R.E. ABURILI**

**JUDGE**

