



**Chengele v Republic (Miscellaneous Criminal Application
E118 of 2022) [2023] KEHC 631 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E118 OF 2022**

**A. ONG'INJO, J
FEBRUARY 8, 2023**

BETWEEN

ALI HAMISI CHENGELE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with 8 (2) of the *Sexual Offences Act* No. 3 of 2006 in Mombasa Criminal Case No 4039 of 2009 on December 17, 2009. He was convicted and sentenced to serve life imprisonment on January 17, 2011.
2. The Applicant's appeal in High Court Criminal Appeal No. 7 of 2011 was dismissed and he now seeks for a review of his sentence in consideration of mitigating factors that he has indicated in his application namely: -
 - i. That during his incarceration, he has lived well with his fellow inmates and prison authorities and a favourable report has been made by the authorities to that effect.
 - ii. That he is a first offender.
 - iii. That he has a wife and six children who are suffering in his absence as the wife is jobless.
 - iv. That he is 57 years old.
3. The applicant also sought that the court takes into account the period that he has been in custody prior to his conviction and makes orders that it deems fit.
4. Although the trial magistrate stated that he had considered the applicant's mitigation before sentence, in actual sense the applicant did not give any mitigation. He simply said that he had nothing to say and that the allegations are not true.



5. In consideration of the emerging jurisprudence that mandatory sentences take away the discretion of the trial court in sentencing and that they are unconstitutional and in consideration of preference for determinate sentences, this court finds that the application is merited. The life imprisonment is set aside and substituted with 25 years imprisonment with effect from December 17, 2009 when the applicant was first arraigned in court.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 8TH DAY OF FEBRUARY 2023**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

