



**Lwambi v Republic (Miscellaneous Criminal Application  
E127 of 2022) [2023] KEHC 1230 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1230 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E127 OF 2022**

**A. ONG'INJO, J**

**FEBRUARY 10, 2023**

**BETWEEN**

**JIDWA LWAMBI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of defilement of a child contrary to Section 8 (1) as read with 8 (2) of the *Sexual Offences Act* No. 3 of 2006 in Mariakani Senior Resident Magistrates Court Criminal Case No. 268 of 2008.
2. Particulars of the offence are that on the 5<sup>th</sup> day of June 2008 at 7.00 pm in Kaloleni District within Coast Province committed an act which caused penetration with a genital organ (penis) to TM a child aged 4 years.
3. The Applicant was found guilty, convicted and sentenced to serve 30 years imprisonment on 2<sup>nd</sup> February 2010 by Hon. Andayi W. F. (SRM). Aggrieved by the conviction and sentence, the Applicant appealed against the decision in Mombasa High Court Criminal Appeal No. 54 of 2010 where the conviction and sentence were upheld.
4. Vide an application filed on 20<sup>th</sup> June 2022 pursuant to Sections 216, 329 and 354 of the *Criminal Procedure Code*, Articles 22 (1) & (2), 23 (1) and 165 of *the Constitution* and Section 8 (1) as read with 8 (2) of the *Sexual Offences Act*, the Applicant 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 long stay in the penal institution, he has lived well with his fellow inmates and prison authority.



- ii. That the prison administration has also granted him very a favourable report which they have commended his character and conduct.
  - iii. That he is a first offender.
  - iv. That he is 34 years old and of good conduct.
5. This court has perused the proceedings and established that his mitigation was considered in sentencing. Further, this court finds that Section 8 (2) of the *Sexual Offences Act* under which the Applicant was charged provides for a sentence of life imprisonment. However, the trial court was lenient enough to give a determinate sentence of 30 years imprisonment. The Applicant's mitigation having been considered before his sentence, the orders being sought for are not available to him and the holding in *Phillip Mueke Maingi & 5 Others v Republic*, Constitutional Petition No. E017 of 2021 is not applicable in this case.
6. The application has no merit and is therefore dismissed. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 10<sup>TH</sup> 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

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

