



**Mukobo v Republic (Miscellaneous Criminal Application
E128 of 2022) [2023] KEHC 771 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E128 OF 2022**

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

BETWEEN

JAMES MUKOBO APPLICANT

AND

REPUBLIC RESPONDENT

(Hon Justice Njoki Mwangi dismissed the appeal)

RULING

Application

1. The Applicant James Mukobo was charged in Mombasa Chief Magistrate's Court Criminal Case No 2031 of 2014 with the offence of defilement of a girl contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act* No 3 of 2006, and indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act*. The Applicant was found guilty of the main charge and sentenced to serve 20 years imprisonment.
2. The Applicant being dissatisfied with the conviction and the sentence, he appealed in Mombasa High Court Criminal Appeal No 87 of 2017 but Hon Justice Njoki Mwangi dismissed the appeal on the basis that instead of being charged under Section 8 (2) of the *Sexual Offences Act* that attracts a sentence of life imprisonment, the Applicant was charged under Section 8 (3) and sentenced to 20 years imprisonment. The learned judge upheld the sentence of 20 years imprisonment for reason that it was less severe of the two.
3. Vide a Notice of Motion Application filed on June 22, 2022 together with the Supporting Affidavit sworn by the Applicant on June 13, 2022, the Applicant now seeks that the mandatory 20 years sentence be reviewed and that the court grants any other order that it deems fit and just.



4. The Application is premised on the Supporting Affidavit that the Applicant is remorseful, that he is a first offender, that he had served 8 years since arrest and that the sentence should be counted from the first date that he appeared in court. The Applicant urged the court to reintegrate him back in society as he is the sole breadwinner to his family aging mother who is a widow and who are suffering due to his incarceration. The Applicant also claimed that he has since reconciled with the Complainant's family.
5. The Applicant filed written submissions on October 25, 2022. The Application together with the submissions have been considered and a perusal of the proceedings in Criminal Case No 2031 of 2014 shows that the Applicant's mitigation was considered. The trial magistrate has indicated that although the Applicant was supposed to be sentenced to mandatory life imprisonment for defiling a 4-year-old child, he sentenced him to 20 years imprisonment because he was charged under Section 8 (3) which provides for imprisonment for a term of not less than 20 years.
6. In Criminal Appeal No 87 of 2017, Hon Justice Njoki Mwangi held, '...the sentence provided for under Section 8 (2) of the *Sexual Offences Act* is life imprisonment. The Appellant in this case was sentenced to 20 years imprisonment. Bearing in mind that he had been charged under the wrong provisions of the law, I uphold the sentence of 20 years imprisonment imposed against the Appellant for the reason that it is the less severe sentence of the two. The said sentence shall be effective from May 11, 2017.'
7. In consideration of precedents where sentences have been substituted for lesser ones for defilement where the victim is less than 10 years, the 20 years imprisonment imposed by the trial court and confirmed by the appellate court is lenient in the circumstances as the Applicant defiled a vulnerable child aged 4 years.
8. In conclusion, this court finds that the application herein lacks merit and is dismissed. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 8TH DAY OF FEBRUARY 2022**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

