



REPUBLIC OF KENYA



KENYA LAW
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**Rai v Republic (Miscellaneous Criminal Application E117 of 2022)
[2023] KEHC 562 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E117 OF 2022**

A. ONG'INJO, J

FEBRUARY 2, 2023

BETWEEN

PAUL MWAJOTO RAI APPLICANT

AND

REPUBLIC RESPONDENT

(Mombasa H.C.CR.A. No. 97 of 2018 and the Judge dismissed)

RULING

1. Applicant was convicted for the offence of rape contrary to Section 3(1) as read with Section 3(3) of the *Sexual Offences Act* in Kwale Chief Magistrates Court CR. Case No. 962 of 2014 and sentenced to serve 30 years imprisonment.
2. He appeared in Mombasa H.C.CR.A. No. 97 of 2018 and the Judge dismissed his appeal but reviewed the sentence to 25 years to run from 22nd August 2014.
3. The applicant has now come before this court seeking that the sentence of 25 years be reduced because he was remorseful and totally reformed. He also sought that this court exercises discretion in line with the holding in *Phillip Mueke Maingi & 5 Others v DPP & AG* – Petition No. E017 of 2021 [2022] eKLR.
4. From the appeal no. 97 of 2018 the Judge did point out that the applicant's mitigation was considered before he was sentenced and the same mitigation was again raised during the hearing of his appeal. Reasons why the sentence of 25 years was imposed are that "he should have left the 81 years old grandmother to enjoy her sunset years in peace without fear of sexual abuse. The said offence must have traumatized her.
5. If he gets remission of 1/3 of 25 years' jail term as per the *Prison Service Act* he would remain with only 17 years from 22nd August 2014. That means that he will complete his sentence in 2031, 8 years from now.



6. I have also considered the applicants sentence review report and find it is favourable.
7. The trial Magistrate was entitled to enhance the minimum sentence to life imprisonment but enhancing it more than the double minimum is in extreme in the circumstances.
8. The sentence is therefore reviewed to 10 years imprisonment from the date of conviction upon completion of the sentence the Applicant will be committed to supervision under Probation Officer under 3 years.

DATED, SIGNED AND DELIVERED BY E-MAIL THIS 2ND DAY OF FEBRUARY, 2023.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Applicant - Present in person

Mr. Ngiri for State

HON. LADY JUSTICE A. ONG'INJO

JUDGE

