



**Kimosop v Republic (Miscellaneous Criminal Application
3 of 2020) [2023] KEHC 23176 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION 3 OF 2020**

RB NGETICH, J

OCTOBER 5, 2023

BETWEEN

BILLY KIPCHUMBA KIMOSOP APPLICANT

AND

REPUBLIC RESPONDENT

(Judgment delivered by Justice F. Azangalala in Eldoret HCCRA No. 116 of 2009)

RULING

1. The applicant Billy Kipchumba Kimosop was charged with the offence of defilement of a girl contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No. 3 of 2006.
2. Particulars are that on 14th day of February, 2009 at about 3:00 p.m. within Baringo District of the Rift Valley Province, the Applicant did cause his penis to penetrate the vagina of JK, a girl aged 10 years. He also faced an alternative charge of committing an indecent act.
3. The applicant was convicted and sentenced to life imprisonment. He filed appeal to High Court at Eldoret vide HCCRA No. 116 of 2009.
4. The appeal on both conviction and sentence was dismissed. The applicant filed this application on 17th day February 2020 seeking to have the sentence of life imprisonment set aside for being harsh and excessive.
5. Today in court, the applicant urged the court to set aside the life sentence imprisonment and impose determinate sentence. He confirmed that he has not filed appeal to the Court of Appeal.
6. In response, the State Counsel Ms. Ratemo opposed the application arguing that this court has no jurisdiction to set aside sentence confirmed by another Judge of the High Court and argued that the sentence can be reviewed by the Court of Appeal.



7. I have perused Judgment delivered by Justice F. Azangalala in Eldoret HCCRA No. 116 of 2009 and confirmed that he dismissed the applicant's appeal.
8. Even though I agree with the Court of Appeal decision in Malindi Criminal Appeal No.12 of 2021 Between Julius Kitsao Manyeso vs Republic that life sentence is unconstitutional, I take note of the fact that the sentence herein was upheld by a Judge of the High Court and I do not have jurisdiction to review an order/sentence by a court with concurrent jurisdiction.
9. The applicant ought to file application for review/appeal before the Court of Appeal.
10. Final Order:
 1. Application herein is hereby dismissed.
 2. Applicant advised to seek review of sentence before the Court of Appeal.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 5TH DAY OF OCTOBER 2023.

RACHEL NGETICH

JUDGE

In the presence of.

Ms Ratemo for State.

Applicant present.

