



**Mwiti v Director of Public Prosecution (Petition E238 of 2023)
[2023] KEHC 23636 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23636 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E238 OF 2023
TW CHERERE, J
OCTOBER 12, 2023**

BETWEEN

ABEL MWITI PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

JUDGMENT

1. Petitioner has petitioned this court for review of the 15-year imprisonment term imposed on him for the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the *Sexual Offences Act* (the Act) sentence on the ground that was a 3rd year KMTTC student at the time of his arrest.
2. Ms. Rita for the DPP opposed the application on the ground that the Supreme Court is yet to decide on the constitutionality of sentences imposed under the Sexual Offences.
3. I have observed that Petitioner was sentenced to the mandatory minimum sentence under Section 8(4) of the Act.
4. Odunga J (as he then was) in the case of *Maingi & 5 others v Director of Public Prosecutions & another* (Petition E017 of 2021) [2022] KEHC 13118 (KLR) held that to the extent that the *Sexual Offences Act* prescribes mandatory minimum sentences, with no discretion to the trial court to determine the appropriate sentence to impose, such sentences fell afoul of Article 28 of *the Constitution*
5. Petitioner has not annexed any document or pleaded the date he was arrested and there is therefore no material before the court upon which the provisions of Section 333(2) of the Criminal Procedure Code can be applied in his favour.
6. In the end, Petitioner is thus resented to serve 10 years imprisonment from the date of his conviction on 17th September, 2021

DELIVERED AT MERU THIS 12TH DAY OF OCTOBER 2023



WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti/Munene

Petitioner - Present

For the DPP - Ms.Rita (PC-1)

