



REPUBLIC OF KENYA



**Justus v Republic (Petition E011 of 2024)  
[2025] KEHC 14199 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14199 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NKUBU  
PETITION E011 OF 2024  
SM GITHINJI, J  
OCTOBER 7, 2025**

**BETWEEN**

**WASHINGTON MUTEMBEI JUSTUS ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner herein one Washington Mutembei Justus was charged, tried and convicted in the lower court for an offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [sexual offences Act](#) No. 3 of 2006.
2. The Particulars of the said offence are that on the 21st day of October, 2017 at around 2:00pm within [Particulars withheld] Village in Kithikanaro Sub-Location, Nkache location in Imenti South Sub-County, within Meru County, the Petitioner intentionally and unlawfully caused his penis to penetrate the vagina of RKG, a girl child aged 12 years. Upon full hearing, the trial court considered the mitigation, observed that the offence is serious and called for a deterrent sentence. The appellant was sentenced to serve 20 years imprisonment.
3. Dissatisfied with the said conviction and sentence, he filed an appeal, HCRA No. E166 of 2022. He as well filed this Petition. When such was noted, he opted to withdraw the appeal and proceed with the Petition. The said appeal was withdrawn and closed on 22/5/2025.
4. The Petitioner seeks sentence review and urges the court to consider the period already served as enough sentence for the offence and release him. He was sentenced on 18/1/2019 and therefore has been in custody for about 6 years. He however claims that he has been in custody for a period of 15 years where he has undergone various rehabilitation programmes.
5. There is a mix up in his application as he challenges life imprisonment of which is not the sentencing he is serving.



6. The Supreme Court in Francis Karioko Muruatetu and Another -vs- Republic; Katiba Institute and 5 Others (Amicus Curiae) [2021] KESC 31 [KLR] (Directions) clarified that the decision in Muruatetu (2017) applies only to the mandatory death sentence under Section 204 of the Penal Code, and not to other statutory provisions prescribing mandatory or minimum sentences, including those under the *Sexual Offences Act*. The court expressly held that until such time as relevant challenges are properly filed and determined, the mandatory and minimum sentences prescribed under *Sexual Offences Act* remain valid and Constitutional.
7. Section 8(3) of the *Sexual Offences Act* No. 3 of 2006 reads;  

“A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”
8. The victim in this case was aged 12 years. The court sentenced the Petitioner to the Minimum sentence allowed in law, of 20 years imprisonment.
9. He had requested that the period spent in remand be considered. The charge sheet shows he was arrested on 25<sup>th</sup> November, 2017. He was able to secure a surety on 5/4/2018 and was thus released on bond. He was in custody for four months; December, 2017, January 2018, February, 2018 and March 2018. In November 2017 he spent 5 days upto end of that month and 5 days in April 2018. From the sentence of 20 years imprisonment he needs the period spent in custody of four months and 10 days deducted. He is surely entitled to that.
10. The calculation will have the Petitioner sentence reduced to 19 years, 7 months and 20 days. This court so orders.

**DATED AND DELIVERED AT MERU THIS 7<sup>TH</sup> OCTOBER, 2025**

**S.M. GITHINJI**

**JUDGE**

Apperances:-

Petitioner - Present at Meru Prison.

Ms. Adhi for the state (Respondent).

