



**Kipkemoi v Republic (Criminal Petition E007 of 2023)  
[2025] KEHC 13638 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL PETITION E007 OF 2023  
JK SERGON, J  
OCTOBER 2, 2025**

**BETWEEN**

**GEOFFREY KIPKEMOI ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Petitioner was convicted and sentenced to life imprisonment for the offence of Defilement Contrary to Section 8 (1) as read with Section 8 (2) of the *Sexual Offences Act* No. 3 of 2006 in Criminal Case No. 59 of 2014 at the Chief Magistrate Court in Kericho on 14 August, 2015.
2. The Petitioner aggrieved by the decision of the trial court appealed to the High Court and Muya J. upheld both the conviction and sentence in his judgment delivered on 28th March, 2017.
3. The Petitioner has made the instant petition to have this court review the life sentence imposed by the trial magistrate. The Petitioner argued that a life sentence is unconstitutional and urged this court to award him a lenient definite sentence under article 50 (2) (p) (q) of *the Constitution* of Kenya.
4. The Petitioner filed a supporting affidavit in support of this petition in which he maintains that this court is seized with competent jurisdiction under article 165 (3) (b) of *the Constitution* of Kenya to hear and determine the instant petition.
5. This court directed that the matter proceed via written submissions.
6. The petitioner filed submissions in which he contended the mandatory nature of the life sentence as imposed under the *sexual offences act* was a violation to his fundamental rights and freedoms. The petitioner reiterated that he was entitled to benefit from a lenient and definite sentence under article 50 (2) (p) (q) of *the Constitution* of Kenya. The petitioner therefore maintained that the life sentence as



- meted upon him was unconstitutional and did not take into account mitigation and the unique facts and circumstances of the offence.
7. The petitioner in his submissions urged this court to consider the declaration of the Supreme Court in the case of Francis Karioko Muruatetu & Anor in which the court declared that mandatory sentences were unconstitutional.
  8. The prosecution filed submissions, the prosecution set out a cogent argument for the rationale behind the enactment of the *sexual offences act*. The prosecution conceded that whereas this court is vested with powers to hear and determine any question on the constitutionality of any provision of the law pursuant to section 23 (1) of *the Constitution* of Kenya, the recourse on mandatory and minimum sentences is in law reform and not the exercise of judicial discretion.
  9. The prosecution cited the case of Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024) (Judgment) in which the supreme court opined as follows; “We must also reaffirm that, although sentencing is an exercise of judicial discretion, it is Parliament and not the Judiciary that sets the parameters of sentencing for each crime in statute. As such, striking down a sentence provided for in Statute, must be based not only on evidence and sound legal principles but on an in-depth consideration of public interest and the principles of public law that informed the making of that specific law. A judicial decision of that nature cannot be based on private opinions, sentiments, sympathy or benevolence. It ought not to be arbitrary, whimsical or capricious. However, where a sentence is set in statute, the Legislature has already determined the course, unless it is declared unconstitutional, based on sound principles and clear guidelines, upon which the Legislature should then act. Suffice to say, where Parliament enacts legislation, the Judicial arm should adjudicate disputes based on the provisions of the law. However, in the special circumstances of a declaration of unconstitutionality, the process is reversed. This is why, even in the Muruatetu case, this Court was keen to still defer to the Legislature as the proper body mandated to legislate. While the courts have the mandate to interpret the law and where necessary strike out a law for being unconstitutional, this mandate does not extend to legislation or repeal of statutory provisions.” The respondent therefore urged this court to dismiss the petition.
  10. Having considered the arguments by the parties, this court finds that the issue ripe for determination is whether to review the life sentence imposed by the trial magistrate. This court wishes to highlight that the provisions of section 8 (1) and (2) of the *Sexual Offences Act* No. 3 of 2006 are couched in mandatory terms in respect of the minimum sentence.
  11. Whereas the applicant has premised his application on Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment). This court is cognisant of the Practice Directions in Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae) (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) where the Supreme Court issued guidelines for its decision on the constitutionality of the mandatory death sentence for the offence of murder in the Muruatetu case, the Supreme Court was clear that its decision in Muruatetu 1, did not invalidate mandatory sentences or minimum sentences in the Penal Code, the *Sexual Offences Act* or any other statute.
  12. This court is aware of the recent Supreme Court decision in Republic v Ayako [2025] KESC 20 (KLR) in a matter whereby the respondent was sentenced to life imprisonment for defilement by the trial court, the conviction and sentence were upheld on first appeal at the High Court but the sentence was later overturned by the Court of Appeal, and substituted with a sentence of 30 years imprisonment to run from 18th July 2011 which was the date he was arraigned in court. However, the supreme court



which is the apex court in the land, held that the Court of Appeal ought not to have proceeded to set a term sentence of thirty (30) years as a substitution for life imprisonment, as the effect would be to create a provision with the force of law while no such jurisdiction is granted to it. The term of thirty years was arrived at arbitrarily without involvement of Parliament and the people. The Supreme Court held that in doing so, the Court of Appeal ventured outside its mandate and powers. The Supreme Court reinstated the life imprisonment as sentenced by the Magistrates' Court.

13. In light of the recent decision by the Supreme Court in the case of Evans Nyamari Ayako (supra), this court finds that sentence review for sexual offences under the supervening legislative framework is untenable. It is therefore the finding of this court that the instant petition has no merit and the same is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025.**

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**J.K. SERGON**

**JUDGE**

In the presence of:

C/Assistant - Rutoh

Prosecutor – Maundu

Applicant – Present in Person

