



**Langat v Republic (Miscellaneous Criminal Application  
E057 of 2023) [2025] KEHC 13601 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13601 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CRIMINAL APPLICATION E057 OF 2023**

**JK SERGON, J**

**OCTOBER 2, 2025**

**BETWEEN**

**ELIJAH KIPYEGON LANGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant 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. 34 of 2016 at the Chief Magistrate Court in Kericho on 1st February, 2017.
2. The Applicant aggrieved by the decision of the trial court appealed to the High Court and Mumbi J. as she then was upheld both the conviction and sentence in her judgment delivered on 21st February 2018.
3. The Applicant aggrieved by the decision of the High Court lodged a memorandum of appeal in the Court of Appeal and the superior court dismissed the appeal and upheld the conviction and sentence in the judgement delivered on 20th September, 2024.
4. The Applicant has made the instant application to have this court review the life sentence imposed by the trial magistrate. The Applicant urged this court to award him a lenient definite sentence under article 50 (2) (p) (q) of *the Constitution* of Kenya and invoke section 333 (2) of the *Criminal Procedure Code* to include the time spent in custody during sentencing.
5. The applicant filed a supporting affidavit in support of this application 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 application. The applicant 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.



6. The matter came up for hearing, the applicant reiterated that he would be relying on the grounds in the instant application and therefore urged this court to review his sentence. The prosecution vehemently opposed the application for review of sentence. The prosecution was of the view that the applicant had exhausted the right of appeal. The prosecution urged this court to consider the recent finding in Republic v Ayako [2025] KESC 20 (KLR) whereby the Supreme Court set aside the decision of the Court of Appeal which overturned a life sentence in a defilement matter that was upheld by the High Court and substituted it with a sentence of 30 years imprisonment to run from 18th July, 2011 which was the date the respondent was arraigned in court for the said offence.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 application 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

