



**Mwai v Republic (Criminal Petition E012 of 2023)
[2025] KEHC 14110 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL PETITION E012 OF 2023
EM MURIITHI, J
OCTOBER 7, 2025**

BETWEEN

JAMES KARIUKI MWAI PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The petitioner filed a petition seeking resentencing of his life imprisonment sentence.
2. The petitioner was charged with the offence of defilement Contrary to Section 8(1)(2) of the *Sexual Offences Act* No 3 of 2006. The particulars of the offence are that on the 1st and 2nd day of January, 2013 at xxxxxx Village in Kirinyaga West District within Kirinyaga County intentionally and unlawfully caused his penis to penetrate the vagina of S.W.W. a child aged 7 years.
3. The petitioner was convicted and sentenced to life imprisonment on 20th June, 2014.
4. He appealed *vide* Criminal Appeal No 31 of 2014 at Kerugoya High Court was dismissed.
5. He moved to Nyeri Court of Appeal under Court of Appeal Case No 125 of 2017 which was also dismissed.
6. The petitioner now moves this Court for resentencing on the grounds that:
 1. Life Sentence without the possibility of release is punitive and torturous.
 2. That he seeks review of life sentence and the fixing of minimum term.
 3. The appropriate sentence in the circumstance.



Petitioner submissions

7. There are no submissions on record

Respondent submissions

Whether this Court has jurisdiction

8. They submit since the Petitioner's application is premised upon *inter alia* Article 22(1), 23(3) and 165 (3), this Court is vested with jurisdiction to hear and determine the applicant's claim of violation under Articles 50 (2) (p) of *the Constitution* which provides:
- i. "Every accused person has the right to a fair trial which includes the right to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the times that the offence was committed and the time of sentencing".
9. They submit further that since it is now a principle that mandatory sentence deprives a trial Court of discretion to impose appropriate sentence, this Court is clothed with appropriate powers to a re-sentence as held in *Michael Katbwa Laichena & Another vs. Republic* 2018 eKLR where Majanja J. stated;
- a. "By re-sentencing the Petitioner, the High Court is merely enforcing and granting a relief for what is in effect a violation caused by the imposition of the mandatory sentence."
10. The respondents submit that while re-sentencing the Petitioner/Applicant, this Court should consider:
11. The *Judiciary Sentencing Policy Guideline* while considering the circumstances surrounding the case.
1. The gravity of the offence and the victim's age.
 2. The Petitioner's age at the time of the commission.
 3. Rehabilitation of the Petitioner since being committed to prison and
 - 4.
 - e) The meaning of the punishment as a deterrent sentence.

Issues

12. Whether this Court has jurisdiction to hear the application by the Petitioner. And whether the re-sentence should ensue as prayed.

Analysis

Whether this court has jurisdiction

13. The petitioner was charged with the offence of defilement Contrary to Section 8(1)(2) of the *Sexual Offences Act* No 3 of 2006. He pleaded not guilty and was taken through full trial. He was found guilty and sentenced to life imprisonment on 20th June, 2014.
14. He now seeks resentencing of the life sentence to a definite sentence.



15. The submissions of the DPP were filed on the basis of the law before the Supreme Court settled the matter of resentencing in sexual offences. The Supreme Court has two decisions of Manyeso and Ayako guided all courts below it in that the life sentence is a constitutional sentence and there is jurisdiction to substitute an imprisonment for a term of years for the life sentence.

Orders

16. Accordingly, in view of the Supreme Court decisions of Manyeso and Ayacko on the constitutional validity of the life sentence for sexual offences, the Court finds no mer in the application for resentencing to reduce the life imprisonment to a term of years.

Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mamba for the DPP/Interested Party.

Appellant in person.

