

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL REVISION NO E340 OF 2024
PETERWAIHARO MUHIA.....

APPLICANT
VERSUS

REPUBLIC.....RESPONDENT

T
RULING

- 1.** This Ruling arises from an application dated 14/5/2024, where the applicant seeks a less severe sentence. The applicant was charged 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**. He faulted the court for not invoking **section 333(2) of the Criminal Procedure Code** during sentencing. The appellant also contends that the mandatory nature of sentences infringes on the right to fair trial guaranteed under **Article 50 of the Constitution**.
- 2.** The applicant filed an appeal before this court on sentence, and this court affirmed the sentence by the trial court.
- 3.** The appellant contends that the mandatory sentences prescribed under the Sexual Offences Act are unconstitutional. However, the Act stipulates minimum, not mandatory, sentences, which establish the lower limit rather than the upper threshold of punishment, thereby preserving the court's discretion to impose a more severe sentence where circumstances warrant. (See Supreme Court decision in

Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR)). The Court of Appeal in the case of **Odago v Republic [2025] KECA 1018 (KLR)** stated:

“(36) On the constitutionality of the mandatory minimum sentence of life imprisonment imposed, the appellant, citing the Supreme Court decision in Francis Muruatetu & Another v Republic [2017] eKLR considered the mandatory nature of the life sentence imprisonment imposed on him unconstitutional. He, therefore, invited us to reconsider the sentence based on this precedent and his reformation since 2012.

(37)The constitutionality of mandatory sentences has been a significant topic in Kenyan jurisprudence, particularly following the landmark decision in Francis Karioko Muruatetu & another v Republic (supra) by the Supreme Court of Kenya that declared the mandatory nature of the death sentence under section 204 of the Penal Code unconstitutional. The court emphasized that mandatory sentences deprive judges of the discretion to consider mitigating factors and the individual circumstances of each case.

(38)However, the Supreme Court in Francis Karioko Muruatetu & Another v Republic, Katiba Institute & 5 Others (Amicus Curiae) [2021] eKLR clarified that its decision in the earlier Muruatetu case applied only in respect to sentences under sections 203 as read with section 204 of the Penal Code, and did not invalidate other

mandatory or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute.

(39) In the context of defilement cases, this Court has addressed the applicability of the Muruatetu decision. In Simiyu v Republic [2025] KECA 153 (KLR), the appellant argued that the mandatory minimum sentences for defilement under the Sexual Offences Act were unconstitutional based on the Muruatetu decision. This Court, differently constituted (Okwengu, Omondi & Joel Ngugi, JJ.A), however, upheld the mandatory minimum sentences, stating that the Muruatetu decision did not apply to defilement cases and that the constitutionality of mandatory sentences for sexual offences must be specifically challenged and determined on a case-by-case basis.

(40) In conclusion, while the Muruatetu case set a precedent for the unconstitutionality of mandatory death sentences, its applicability to defilement cases and other offences has subsequently been dealt a deathblow by the Supreme Court. The appellant's argument that the sentence imposed was unconstitutional or illegal is unfounded and must be therefore be dismissed. Additionally, the Court lacks the jurisdiction to reduce the mandatory life sentence, as this is the statutory minimum prescribed under section 8(2) of the Sexual Offences Act, which the trial court was obligated to impose.

(41) In conclusion, justice must at all times be upheld and the statutory framework respected, ensuring the protection of society's most vulnerable. Accordingly, this

appeal is without merit and is hereby dismissed in its entirety.”

4. Consequently, for the above reasons, the application for review is unmerited and declined.

**Dated, Signed and Delivered at BUNGOMA this 28th day
of October 2025**

**R.E. OUGO
JUDGE**

**In the presence of:
Appellant in person
Miss Matere
Wilkister**

For the Respondent

-C/A

JUDGES COPY