**DMM v Republic (Criminal Appeal E077 of 2024)**
**[2025] KEHC 15066 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15066 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KISII**

**CRIMINAL APPEAL E077 OF 2024**

**DKN MAGARE, J**

**OCTOBER 23, 2025**

**BETWEEN**

**DMM ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Appeal arises from the Judgment of the Hon. P.K Mutai, Principal Magistrate in Kisii CMCSO No. E025 of 2024 delivered on 9.7.2024)***

## JUDGMENT

1. This appeal arises from the Judgment of the Hon. P.K Mutai, Principal Magistrate in Kisii CMCSO No. E025 of 2024 delivered on 9.7.2024.

2. The Appellant was charged with rape contrary to Section 3(1)(a)(c ) (3) of the *Sexual Offences Act* No. 3 of 2006. There was also an alternative charge of committing an indecent act with an adult contrary to Section 11(A) of the *Sexual Offences Act*, 2006.

3. The particulars of the offence were that on 29.2.2024, in Marani Sub-county of Kisii County, the Appellant intentionally and unlawfully caused his penis to penetrate the vagina of LNM by use of force.

4. The Appellant was arraigned and he denied the charges. A plea of not guilty was consequently recorded. The court gave directions regarding bond and a hearing date. Four prosecution witnesses testified while the appellant testified on oath and did not call any witnesses.

5. The trial court considered the case and rendered the judgment. The Court found the Appellant guilty and convicted him of the offence of rape. The Appellant was also sentenced to 10 years imprisonment.

6. The Appellant, aggrieved, lodged this appeal. The Petition of Appeal dated 16.7.2024 raised the following grounds:

1. That the trial magistrate failed in both law and facts by sentencing the said young boy (18) years to serve 10 years without observing that the offence of defilement was not proved beyond reasonable doubt.

2. That the evidence tendered by the prosecution side was scanty which would not have been used to secure conviction.

3. That this was a long family grudge between the appellant's family which generated to the fabrication and implication of the appellant.

4. That the appellant herein is a young boy with a future which is almost ruining thus asking this Hon. Court with such powers to expedite justice for him.

5. That for sure 10 years was manifestly harsh and excessive considering the circumstances of this case.

6. That the trial magistrate erred in both law and facts by convicting the appellant despite the glaring contradictions thus making his conviction unsafe.

7. The appeal was thus on three aspects, that is:

   a. Sentence

   b. Failure to consider a defence of a family grudge

   c. Conviction

**Evidence**

8. At the trial, PW1, the complainant, testified that on 29.2.2024, at about 11:00 p.m., while it was raining heavily and she was asleep, the appellant entered her room carrying a lamp. He demanded money and, upon her saying she had none, the appellant assaulted her. He then pushed her onto the bed, removed her under panties and forcibly had sexual intercourse with her. Her son, upon hearing her screams, rushed to the scene, but the assailant fled. The complainant continued that the appellant punched her all over the body, causing pain, including in her private parts. She maintained that she saw and recognized the appellant, both visually and by his voice.

9. On cross examination, it was her case that she didn't know the weapon the Appellant used to damage her house before entry. He came through the kitchen and then to the roof top and fell onto the bed. It is noteworthy that there was no question in cross examination related to a grudge and the actual rape.

10. PW2, TK., testified that she was a cousin to the Appellant, while PW1 was her mother-in-law. On 29.02.2024, she heard screams emanating from PW1's house. It was raining heavily at the time, but she rushed to the scene. Upon arrival, PW1 informed her that the assailant had fled. She observed that PW1 appeared traumatized and was walking with difficulty. PW2 then assisted in taking PW1 to the hospital. On cross-examination, PW2 stated that PW1 recognized the assailant. She went to the scene after hearing the wailing from PW1. She did not go to the Appellant's home. She stated that the Appellant did not escape from his home after the incident.

11. PW3, Moses Keumbu, a clinical officer, testified that he examined PW1, who was 84 years old as of 1.3.2024, and presented with a history of rape. He observed that her undergarment was torn and noted swelling on the left side of the complainant's neck. A high vaginal swab revealed that there were no spermatozoa. However, the complainant had lacerations on the vaginal wall and there was mild bleeding. He concluded that there was evidence of penetration.

12. He was examined whether the PRC form was stamped. The witness stated that only P3 form is stamped.

13. PW4 was No. 25xxx PC Rehema Karen. She testified that the case was reported on 01.03.2024. Following the report, the area Chief arrested the Appellant and handed him over to the police station. She visited the locus in quo. Further she was informed that the complainant had identified the Appellant as the assailant. She conducted investigations and formed the opinion that the Appellant was culpable, leading to his being charged.

14. DW1 was the Appellant. He testified that he was at his home when he was arrested. He was later charged. He stated he did not know reasons he was arrested.

**Submissions**

15. In his submissions dated 2.10.2024, the appellant argued that the evidence of PW1 and PW2 was inconsistent as to who came to the complainant's aid. Further that there was doubt on who took the complainant to the hospital. He further contended that the assailant escaped from the scene and that PW2 did not properly identify the assailant.

16. The appellant also questioned the failure of the area chief to testify, asserting that his evidence would have been material to the prosecution's case. He further noted that the lamp allegedly used for lighting during the incident was not produced in evidence. Finally, he faulted the investigating officer for failing to visit his home or conduct any recovery, which, in his view, weakened the prosecution's case.

17. The Respondent filed submissions dated 1.9.2025 by which it was submitted that the Respondent proved intentional and unlawful penetration of the vagina of PW1, the lack of consent, and that the Appellant was the perpetrator.

18. On the sentence, it was submitted that the sentence of 10 years imposed was the minimum and lawful sentence.

**Analysis**

19. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

20. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in Pandya v Republic [1957] EA 336 as follows:-

> On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different.

21. Therefore, this court will not interfere with the exercise of judicial discretion by the court below unless it is satisfied that its decision is clearly wrong. In the case of Mbogo and Another v Shah [1968] EA 93 the Court stated:

> ...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.

22. This court dealing with the instant appeal is entitled to consider the evidence in the trial court as a whole as being submitted afresh to be subjected to exhaustive examination to guide the court towards its own decision on the evidence. In Kiilu & Another v Republic [2005]1 KLR 174, the Court of Appeal stated as follows:-

1. An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate Court's own decision on the evidence. The first appellate Court must itself weigh conflicting evidence and draw its own conclusions.

2. It is not the function of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower Court's findings and conclusions; only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial Court has had the advantage of hearing and seeing the witnesses.

23. The first issue for this court's determination is whether the prosecution proved the offence of rape as against the appellant beyond reasonable doubt. The first sub issue is whether the court ignored the appellant's defence. The second issue is whether the sentence was manifestly excessive and harsh. It must however be recalled that the issues raised in the memorandum of appeal are largely not issues before the court below.

24. The offence of rape is created under Section 3 of the *Sexual Offences Act* as follows:

(1) A person commits the offence termed rape if—

(a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;

(b) the other person does not consent to the penetration; or

(c) the consent is obtained by force or by means of threats or intimidation of any kind.

(2) In this section the term intentionally and unlawfully has the meaning assigned to it in section 43 of this Act.

(3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life

25. Proof beyond reasonable doubt does not impose a standard of proof beyond the shadow of a doubt. Where the evidence tendered is so strong as to leave only a remote possibility in favour of the accused person, which can be dismissed with the sentence of course it is possible, but not in the least probable,

then it can be said in law that the case is proved beyond reasonable doubt. It was held by the Court of Appeal in Moses Nato Raphael v Republic [2015] eKLR as doth:

> What then amounts to reasonable doubt? This issue was addressed by Lord Denning in Miller v Ministry of Pensions, [1947] 2 ALL ER 372 where he stated:-
>
> 'That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.'

26. At the trial, PW1 was described as being 84 years old. The unlawful acts against her were allegedly committed at night on 29th February 2024. She testified that the appellant had a lamp, by whose light she was able to see and recognize him. She stated that she knew the appellant well, as he was her nephew. PW2 similarly testified that she knew the appellant, describing him as her cousin. The Appellant forcefully removed PW1's pant and had carnal knowledge of her.

27. This, however, brings into focus the question of reliance on a single identifying witness. Other than the provisions of Section 124 of the *Evidence Act*, which allow for a conviction based on the testimony of a single witness in sexual offences if the court believes the complainant and records the reasons for such belief, the court must nonetheless exercise caution and warn itself of the dangers of relying solely on the evidence of a single identifying witness.

28. In the case of R v Turnbull & Others [1976] 3 All ER 549, which decision has been generally accepted and greatly used in our judicial system, the court set out the guidelines to be observed when the evidence of visual identification is relied upon, emphasizing the need for the court to consider the circumstances under which the identification was made. The said court stated as doth:

> The Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have with the Accused under observation? At what distance? In what light? Was the observation impeded in any way...? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? Recognition may be more reliable than identification of a stranger but even when the witness is purporting to reorganize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made....

29. While addressing evidence of a single witness, the court, C.N. Njagi posited as follows in the case of Vincent Manyonge v Republic [2018] KEHC 164 (KLR):

> Before the court convicts on the evidence of a single identifying witness, the court has to warn itself of the dangers of convicting in reliance of such evidence. The evidence has to be thoroughly examined and be ruled to be free from the possibility of error. This was well set out in the case of Kiilu v Republic (2005) 1KLR 174 where the court of Appeal held that :-

'subject to certain well known exceptions , it is trite law that a fact may be proved by testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to the guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the probability of error." See also Abdalla Wendo & Another v Republic (1953) 20 EACA(166) KLR 198.

In Maitanyi v Republic (1986) KLR 198 the same court held that :-

> " 1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.
>
> 2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description.
>
> 3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision. It must do so when the evidence is being considered and before the decision is made."

The court continued and held that:

> " That may sound too obvious to be said, but the strange fact is that many witnesses do not properly identify another person even in daylight. It is at least essential to ascertain the nature of the light available. What sort of light, its size, and its position relative to the suspect, are all important matters helping to test the evidence with the greatest care. It is not a careful test if none of these matters are known because they were not inquired into. In days gone by, there would have been a careful inquiry into these matters, by the committing magistrate, state counsel and defence counsel. In the absence of all these safeguards, it now becomes the great burden of senior magistrates trying cases of capital robbery to make these enquiries themselves."

30. However, this being a sexual offence, the evidentiary rules have been modified to better serve the interests of justice and society. In such cases, the critical issue is not the need for a warning on the dangers of relying on a single witness, but rather whether the court has recorded cogent reasons for believing the complainant's testimony in accordance with Section 124 of the *Evidence Act*.

31. In the present appeal, the complainant's testimony was clear, consistent, and detailed. She gave a coherent account of the events of that night and remained firm under cross-examination. The court below observed her demeanour and found her to be a truthful and credible witness. She knew the appellant well as her nephew and had ample opportunity to recognize him under the lamp light. Accordingly, the court is satisfied that the complainant was a credible witness whose testimony could be relied upon without the need for corroboration. The court below was equally satisfied. There was no shadow of doubt in the evidence of PW1. Consequently, the court rightly applied Section 124 of the *Evidence Act*.

32. The court is mindful that the law does not prescribe any particular number of witnesses necessary to prove a fact. What matters is the quality and credibility of the evidence, not the quantity of witnesses called. Section 143 of the *Evidence Act* (Cap 80 Laws of Kenya) provides as follows:-

> No particular number of witnesses shall in absence of any provision of the law to the contrary be required for proof of any fact.

33. Evidence tendered by the prosecution was that of recognition and not identification. The complainant recognized the nephew as the assailant. She maintained that she saw the appellant and knew him. This evidence remained unrebutted and unchallenged.

34. It must be remembered that the key issue in respect of the single witness was recognition. Madan JA, as he then was, addressed the difference in approach between identification and recognition in Reuben Taabu Anjononi, Benjamin Akisa Anjononi and Monya Anjononi v Republic [1980] KECA 23 (KLR)

> Being night time the conditions for identification of the robbers in this case were not favourable. This was, however, a case of recognition, not identification, of the assailants; recognition of an assailant is more satisfactory, more assuring, and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other. We drew attention to the distinction between recognition and identification in Siro Ole Giteya v The Republic (unreported).
>
> We consider that in the present case the recognition of the appellants by Wanyoni and Joice to whom they were previously well known personally, the first appellant also being related to them as their son-in-law, was made both possible and satisfactory in the two brightly-lit torches which two of the appellants kept flashing about in Wanyoni's bedroom in such a manner that the possibility of any mistake was minimal.

35. The issue of identifying the appellant as the assailant was proved beyond reasonable doubt. In this instance, there is no doubt that the appellant was well known to PW1. The combination of familiarity, adequate lighting, and the fact that the appellant spoke to PW1 during the ordeal created favorable circumstances under which PW1 was able to positively and readily recognize the appellant as the perpetrator.

36. The appellant entered the house of the complainant. He broke the roof and disturbed the restful night where an 80-year-old was peacefully sleeping. Entry into the complainant's house through the roof was breach of privacy that cannot be countenanced. I dare expand that no person is entitled to violet the privacy of the complainant's house. He may learn from words of Ouko JA, as he then was, who stated as follows in the case of Elizabeth Wambui Githinji & 29 others v Kenya Urban Roads Authority & 4 others [2019] KECA 706 (KLR):

> Just as the sanctity of a person's property in the English common law was recognized in the famous dictum that an Englishman's home (or occasionally, house) is his castle and fortress, *the Constitution* and land laws in Kenya protect, as fundamental the right to acquire and own property of any description; and in any part of Kenya. This sanctity was so important in the days of old that one Right Honourable, William Pitt, 1st Earl of Chatham graphically explained it thus;
>
> The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter.

37. The next question is proof of the other elements of rape. The ingredients for the offence of rape to be proved are:

    a. Penetration

    b. Lack of consent

    c. Coercion/force to obtain consent.

38. The crucial element in establishing a charge of rape is the absence of consent. In the case of Charles Ndirangu Kibue v Republic [2016] KEHC 4847 (KLR) JM Mativo J (as he then was ) held that:

> The essence of rape is the absence of consent. Consent means an intelligent, positive concurrence of the 'will' of the woman. The policy behind the exemption from liability in the case of consent is based on the principle that a man or a woman is the best judge of his or her own interest, and if he or she decides to suffer a harm voluntarily, he or she cannot complain of it when it comes about.
>
> Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific sexual act. Thus, to absolve a person of criminal liability, consent must be given freely and it must not be obtained by fraud or by mistake or under a misconception of fact. This clause operates where a woman is unresponsive whether because of the influence of drink or drugs or any other cause, or is so imbecile that she is incapable of giving any rational consent. Consent of the woman has to be obtained prior to the act.

39. According to the medical evidence tendered by PW3, PW1 had lacerations on the vaginal wall and swelling on the left side of the neck. There was also mild bleeding from the vaginal wall and he was of the view that PW1 had been penetrated in the vagina. The elements of penetration of the vagina by a penis was proved. The complainant was succinct on the actions that took place. One of the elements that was proved was that there was no consent. There was no fraud but an attack on the complainant while she was asleep. Further, violence was meted out on her. She suffered a swelling on the neck as per P3 and PRC form. The attack on the document on the question of stamp was baseless and otiose.

40. The respondent successfully established the essential elements of the offence of rape against the appellant. The issue of rape was addressed in the case of Republic v Francis Otieno Oyier [1985] KECA 55 (KLR) where the Court of Appeal [Hancox, Nyarangi JJA & Chesoni Ag JA] observed as follows:

> prosecution still had to prove the second element of the offence of rape, and that is lack of consent for as the predecessor of this Court said in Upar v Uganda [1971] EA 98, lack of consent always remains an essential element of the crime of rape and so it should be specifically dealt with.
>
> The learned magistrate had the correct appreciation of the mens rea in rape. It is primarily an intention and not state of mind. Thus the mental element is to have intercourse without consent, or not caring whether the woman consented or not: DPP v Morgan (1975) 61 Cr Appl. R 136 HL The prosecution must prove either that the complainant physically resisted, or, if she did not, that her understanding and knowledge were such that she was not in a position to decide whether to consent or resist; Archbold Criminal Pleading Evidence and Practice 40th Edn pp 1411 – 1412 paragraph 2881 and R v Harwood K (1966) 50 CR App R 56. So if a woman yields through fear of death or through duress, it is rape and it is

> no excuse that the woman consented first, if the offence was afterwards committed by force or against her will; nor is it any excuse that she consented after the fact.

41. Having found that the appellant's conviction was safe, the court has no basis to interfere with the conviction. Therefore, the appeal on conviction is hereby dismissed. The appellant requested a retrial but offered no reasons in support of that request. It appears that the application was made in the vain hope that PW1, a key witness, may no longer be available at the time of a retrial.

42. The next issue concerns the appeal against sentence. This requires consideration of three elements, both in general and in specific terms; that is the legality, harshness or reliance on wrong principles. The principles guiding an appellate court in exercising its discretion to interfere with a sentence imposed by a trial court are now well settled. The Court of Appeal in the case of Ogolla s/o Owuor v Republic [1954] EACA 270, pronounced itself on this issue as follows:

> The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors. To this, we would add a third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case (R v Shershowsky (1912) CCA 28TLR 263). See also Omuse v R (supra) while in the case of Shadrack Kipkoech Kogo v R., Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated thus:-
>
> sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka v R. (1989 KLR 306)

43. The sentence imposed on the appellant was 10 years. The same is the minimum mandatory sentence. The question of such sentences was addressed in the case of Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR), where the Supreme Court, [MK Koome, CJ, MK Ibrahim, SC Wanjala, N Ndungu & I Lenaola, SCJJ] posited as follows:

> 11. Mandatory sentences and minimum sentences as punishment in law have been commonly prescribed by legislatures worldwide but recently, various apex courts of several countries such as Canada, the USA, Australia, and South Africa as well as the European Court of Human Rights have struck down both mandatory life imprisonment as well as minimum sentences in an effort to move towards the approach of proportionality in punishment based on the actual crime committed
>
> 12. Before Kenyan courts could determine whether or not the prevailing trends and decisions were persuasive, there ought to be a proper case filed, presented and fully argued before the High Court and escalated through the appropriate channels on the constitutional validity or otherwise of minimum sentences or mandatory sentences other than for the offence of murder. That was the Supreme Court's approach and direction in Muruatetu which had to remain binding to all courts below.
>
> 13. The Court of Appeal failed to identify with precision the provisions of the *Sexual Offences Act* it was declaring unconstitutional, left its declaration of unconstitutionality ambiguous, vague and bereft of specificity. That approach was problematic in the realm of criminal law because such a declaration would have grave effect on other convicted and sentenced persons who were charged with the same offence. Inconsistency in sentences for the same offences would also create mistrust and unfairness in the criminal justice system. Yet the fundamental issue of the

constitutionality of the minimum sentence may not have been properly filed and fully argued before the superior courts below.

44. Further, the same court delivered its decision in Republic v Manyeso [2025] KESC 16 (KLR), where is stated as follows:

> Paragraph 11 to 14 of the Muruatetu directions are very clear that the decision in the Muruatetu case did not invalidate mandatory sentences or minimum sentences in the Penal Code, *Sexual Offences Act* or any other statute. Further, that the Muruatetu case cannot be said to be the authority for stating that all provisions of the law prescribing minimum sentences are inconsistent with *the Constitution*. Paragraphs 93 to 97 of the Muruatetu decision are also explicit that it is not for the court to define what constitutes a life sentence. While we appreciated that a life sentence could mean a certain minimum or maximum time to be set by a judicial officer, this court made the following recommendations to the Attorney General to develop legislation on what constitutes a life sentence:"94.We recognize that although the Judiciary released elaborate and comprehensive Sentencing Policy Guidelines in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in agreement with the High Court decision in Jackson Wangui, supra, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature.95.We also acknowledge that in Kenya and internationally, sentencing should not only be used for the purpose of retribution, it is also for the rehabilitation of the prisoner as well as for the protection of civilians who may be harmed by some prisoners. We find the comparative jurisprudence with regard to the indeterminate life sentence is compelling. We find that a life sentence should not necessarily mean the natural life of the prisoner; it could also mean a certain minimum or maximum time to be set by the relevant judicial officer along established parameters of criminal responsibility, retribution, rehabilitation and recidivism.96.We therefore recommend that the Attorney General and Parliament commence an enquiry and develop legislation on the definition of 'what constitutes a life sentence'; this may include a minimum number of years to be served before a prisoner is considered for parole or remission, or provision for prisoners under specific circumstances to serve whole life sentences. This will be in tandem with the objectives of sentencing.
>
> 65. From the above paragraphs of the Muruatetu case any reading of that decision ought to lead to the conclusion that it is upon the Legislature to enact legislation on what constitutes a life sentence and not the courts.

45. Being a minimum sentence, the same was proper. Appeal on sentence is thus untenable and is accordingly dismissed.

46. Therefore, I dismiss the appeal and uphold the conviction and sentence.

**Orders**

47. I make the following final orders: -

    a. The appeal on conviction and sentence is dismissed. The decision in the court below is upheld.

    b. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 23RD DAY OF OCTOBER, 2025. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Appellant present

Mr. Komen for the Respondent

Court Assistant – Michael