

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
HCCR REV 273 OF 2023
JOSEPH SAMMY MUNZIU V REPUBLIC
RULING

The applicant file this application vide Notice of Motion on 11th September 2023 under Article 27,50(2) (p) and 165(6) of the Constitution and s. 26(2) of the Penal Code.

He seeks orders

- 1. This matter be certified as extremely urgent and be heard in the first instance.*
- 2. This honourable court be pleased to interpret and invoke itself on provisions put in place regarding the spirit of Constitutionalism and the rule of law which grants fairness in the individual circumstances of the present case.*
- 3. That the honourable court be pleased to revise the sentence mitigated upon the applicant and consider the period served behind bars after the conviction.*

4. That the applicant be exempted from paying costs as he is a pauper.

The grounds for the application are set out on the face of the application that;

- 1. That the applicant was initially arraigned in court on a charge of Incest Contrary to Section 20(1) of the Sexual Offences Act No. 3 of 2006 - whereby I was found guilty of the charge and consequently convicted to serve a Life Sentence on the 21st of December, 2017 in Cr. Case No. 354 of 2016; at Makindu Law Courts by Hon. A. Ndung'u, RM. I have been incarceration since then up to date.*
- 2. That the meek applicant sent an appeal at the High Court at Makueni which was dismissed on the 8th day of August, 2019 vide HCCRA No. 51 of 2018 by Hon. Ong'udi (J). I therefore sent an appeal to the Court of Appeal at Nairobi (CA 58 of 2021) which was heard and dismissed on 22nd day of June, 2023 by Hon. Justice A.K Murgor, S. Ole Kantai and M. Gachoka (JJ.A)*
- 3. That the applicant has resolved for a re-sentencing process upon mitigation at the Lower Court pursuant to*

the High Court Order Number (b) that all Resentencing Miscellaneous applications be remitted back to their trial courts for re-sentencing processes on mitigation alone by the High Court Presiding Judge Hon.J. Lesiit (J) as she was.

4. That the above order has further been affirmed on 29/8/2022 by Hon. justice J. M. Mativo sitting at Mombasa H. Court; Constitutional & Judicial Review Division in Pet. No. 97 of 2021 [Edwin Wachira and 9 others Order No. (f) that persons convicted and imprisoned under the said offences are at liberty to petition the high court for mitigation and resentencing and as well countersigned by the Hon. Justice Stephen Githinji on the 31st day of August, 2022.

5. That further, the above orders were pursuant to the directions in Muruatetu, Articles 165(3) (a) and Article 50(6)(b) of the Constitution of Kenya, this Hon.Court has unlimited jurisdiction in criminal matters and has powers to grant the relief sought in this humble application. I, the applicant believes that if new

- mitigating factors are to be considered pursuant to Article 50(6)(b) of our Constitution, Sections 216 and 329 of the CPC; Cap 75, Laws of Kenya mitigation prior to sentence - is part and parcel of the trial process.*
- 6. That the Appellate Court equally failed to take into consideration the spirit of Equality, Constitutional fairness, and the proviso under Article 50(2) (p) of the Constitution and Section 26(2) of the Penal Code.*
- 7. That the applicant had been apprehended on 21/03/2016 up to date on 14/08/2023 which amounts to eight (8) years.*

The applicant supports the application vide the Supporting Affidavit sworn on 17th August 2023. He depones;

- 1. That I resolved for a re-sentencing process upon mitigating at the lower court pursuant to the High Court order Number(b) that all resentencing Miscellaneous Applications be remitted back to their trial courts for*

resentencing processes on mitigation alone by the High Court Presiding Judge Hon. J. Lesiit (J), as she was.

2. That after being heard at the trial court, my humble application was dismissed on 8/9/2021 after the Supreme Court's ruling that Muruatetu ruling was subject to Murder Cases only.

I have carefully considered the application, the grounds and the affidavit.

The applicant told the court

'Nimemaliza Kenya Court, kutoka jela imekuwa ngumu... nataka kifungo naweza kutumikia. Kwa sasa nimefungwa life.

Evidently the applicant is of the view that this court can review his sentence to a sentence that is measured.

He has noted that **Muruatetu 1** which allowed for these resentencing applications, the Supreme Court gave guidance that that order for resentencing is not applicable to sexual offences but is only applicable to murder cases. The applicant is well aware of that.

The applicant is not without recourse. Article 133 of the Constitution read together with the Power of Mercy Act, Cap 94, creates room for the applicant to petition for his release.

Otherwise, the application for resentencing is untenable and is declined.

Dated, signed and delivered virtually on 9th October 2025

Mumbua T Matheka

Judge

Appellant Present

Mr. Kazungu for the State