



REPUBLIC OF KENYA



**Oduor v Republic (Criminal Petition E020 of 2025)  
[2025] KEHC 15160 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15160 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL PETITION E020 OF 2025  
DR KAVEDZA, J  
OCTOBER 22, 2025**

**BETWEEN**

**MAURICE OTIENO ODUOR ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a petition for resentencing in Kibera Chief Magistrate's Court  
Sexual Offences Case No. 2356 of 2007, Nairobi High Court Criminal  
Appeal No. 778 of 2007 and Court of Appeal No. 525 of 2010)*

**JUDGMENT**

1. The petitioner was charged, convicted, and sentenced to life imprisonment by the Chief Magistrate's Court in Criminal Case No. 2356 of 2007 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. His appeal to the High Court in Criminal Appeal No. 778 of 2007 was dismissed. Likewise, his appeal to the Court of Appeal, being Criminal Appeal No. 525 of 2010, was dismissed, and the life sentence was affirmed.
2. The petitioner has now approached this Court by way of a constitutional petition seeking an order for resentencing. He contends that the mandatory nature of the life sentence prescribed under section 8(2) of the *Sexual Offences Act* is unconstitutional. He states that he has exhausted all appeal avenues and now invokes sections 216 and 329 of the Criminal Procedure Code (Cap. 75, Laws of Kenya), urging the Court to consider his mitigation and substitute the life sentence with a definite term of imprisonment.
3. The issue for determination is whether the life sentence imposed upon the petitioner is unconstitutional in light of the recent pronouncements of the Supreme Court on mandatory and minimum sentences.



4. The doctrine of stare decisis obliges this Court to follow the binding decisions of the Supreme Court. Article 163(7) of *the Constitution* provides that:
 

“all courts, other than the Supreme Court, are bound by the decisions of the Supreme Court.”
  5. This principle ensures consistency and certainty in the administration of justice, and it leaves no room for a subordinate court to deviate from a settled position of law declared by the apex court.
  6. In *Republic v Joshua Gichuki Mwangi* [2024] KESC 34 (Petition No. E018 of 2023), the Supreme Court addressed the constitutionality of minimum and mandatory sentences under the *Sexual Offences Act*. The Court held that the Court of Appeal had acted in error by assuming original jurisdiction to determine the constitutionality of minimum sentences when that issue had not been raised or determined at the trial level. The Supreme Court consequently set aside the Court of Appeal’s judgment that had declared the minimum sentences for sexual offences unconstitutional.
  7. The Supreme Court further clarified that its earlier decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR was limited to the mandatory death sentence under section 204 of the Penal Code. It did not invalidate statutory minimum or mandatory sentences provided for in other statutes, including the Penal Code and the *Sexual Offences Act*. The Court reaffirmed that Parliament has the constitutional authority to define offences and prescribe corresponding penalties, including minimum or mandatory terms, provided such laws do not infringe the Bill of Rights. Judicial discretion in sentencing must therefore operate within the framework established by statute.
  8. The ratio decidendi in *Joshua Gichuki Mwangi* (supra) is binding on this Court. The Supreme Court’s pronouncement conclusively settles the question of the constitutionality of minimum and mandatory sentences. Consequently, the petitioner’s challenge to the life sentence cannot stand.
  9. The record of the trial court demonstrates that the learned magistrate considered the petitioner’s mitigation and his status as a first offender before imposing the sentence prescribed by law. There is no indication that the trial court overlooked any material factor or acted under a misapprehension of the law.
  10. The petitioner also exercised his right of appeal before both the High Court and the Court of Appeal, where his conviction and sentence were reconsidered and upheld. Having exhausted the appellate process, and in view of the authoritative guidance of the Supreme Court, this Court finds no legal basis to interfere with the sentence imposed.
  11. The claim that the life sentence is unconstitutional is therefore without merit. The petition discloses no violation of constitutional rights or any miscarriage of justice that would warrant intervention by this Court.
  12. Accordingly, the petition is found to be devoid of merit and is hereby dismissed in its entirety.
- Orders accordingly.

**JUDGEMENT DATED AND DELIVERED THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

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**D. KAVEDZA**  
**JUDGE**

In the presence of:



Petitioner Present

Mutuma for the Respondent

Karimi Court Assistant.

