



**JWK v Republic (Miscellaneous Application E002 of 2025)
[2025] KEHC 16836 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E002 OF 2025**

RC RUTTO, J

NOVEMBER 13, 2025

BETWEEN

JWK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court for determination is the applicant's application dated 27th January 2025. It is anchored on Articles 49 and 50 of *the Constitution*, sections 349 and 357 of the Criminal Procedure Code and rules 22 and 23 of the High Court (Organization and Administration) Rules seeking the following reliefs:
 - a. That life sentence be declared unconstitutional;
 - b. The applicant herein be granted resentencing;
 - c. Any further orders this court may deem fit;
2. The application is supported by the grounds set out in the body of the Application and the applicant's supporting affidavits dated 27th January 2025 and 25th March 2025. The brief background is that the applicant was charged with the offence of incest contrary to section 20 (1) of the *Sexual Offences Act* in Kangundo Criminal Case No. 3 of 2006. After a full trial, he was convicted and sentenced to life imprisonment on 28th June 2010. The applicant appealed to the Machakos High Court in HCCRA No. 278 of 2010 *John Wambua Kioko v Republic* but his appeal was dismissed on 8th July 2021.
3. Undeterred, the applicant filed HC Misc. App. No. 122 of 2019 before the Machakos High Court, which was also dismissed on 8th July 2021. He now contends that having been in custody for 15 years he is eligible for resentencing. He cites several decisions in support of his position.



4. The applicant argues that his Court has jurisdiction to determine whether the sentence imposed meets the long-term objectives of justice, especially considering the recent jurisprudence. He relies on the decisions in Philip Mueke Maingi & 5 others vs. Republic Petition No. E017 of 2021 at Machakos and Edwin Wachira & 9 others vs. Republic Petition No. 97 of 2021.
5. During the hearing, the applicant relied entirely on his Notice of Motion and supporting affidavits. The respondent, did not file any response, however, they filed written submissions dated 16th June 2025. It argued that the application fails to meet the threshold for a constitutional petition as established in the locus classicus case of Annarita Karimi Njeru vs. Attorney General [1979] KLR 154 and Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 others [2013] eKLR. The Respondent also cites the decisions in Republic vs. Ayako [2025] KESC 20 (KLR) and Republic vs. Joshua Gichuki Mwangi Petition No. E018 of 2023 to urge the court to dismiss the application.
6. I have considered the application, the submissions and analyzed the law. Although framed as an application, it is apparent that the applicant is seeking declaratory orders regarding the constitutionality of life sentences. This amounts to a disguised constitutional petition seeking declaratory orders regarding life sentences. The celebrated case of Annarita Karimi Njeru vs. Attorney General (Supra) has set out the threshold that must be met by a party in order for a constitutional petition to be considered in the following terms:

“If a person is seeking redress from the High Court in a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they have been infringed.”
7. It is evident that the application before me has not met this threshold. Viewed differently, the applicant appears to be attempting a second bite at the cherry, that is seeking a second review of his sentence The application lacks clarity as to whether the applicant is challenging the constitutionality of life sentence in general or merely seeking a personal sentence review.
8. Moreover, the Supreme Court decision in Republic vs. Joshua Gichuki Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) and Republic vs. Manyeso [2025] KESC 16 (KLR) have reaffirmed the constitutionality of mandatory sentences under the *Sexual Offences Act* are lawful.
9. In conclusion, this court is not only functus officio but also, finds the application unmerited and incompetent. Accordingly, the Notice of Motion is hereby dismissed.
10. It is so ordered.

SIGNED, DATED AND DELIVERED AT MACHAKOS THIS 13TH DAY OF NOVEMBER 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant

