

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CRIMINAL REVISION E092 OF 2023**

**DANIEL  
APPLICANT**

**MUTHOGA.....**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

**RULING**

1. This a revision application arising from the original conviction and sentence from Kandara Magistrates Court in SO No. 17 of 2018. The Applicant was tried and convicted of the offence of rape contrary to **section 3(i) (a)(c) (3) of the Sexual Offences Act**. He was sentenced to 10 years imprisonment on 7<sup>th</sup> September 2019.
2. Vide Notice of motion Application dated 8<sup>th</sup> February 2023, the applicant seeks for the court's indulgence for review of sentence on the basis that mandatory sentences were outlawed following the *Muruatetu case* finding by the Court of Appeal and that the court should revise his sentence downwards. The application is supported by the applicant's Affidavit of even date averring that he has been rehabilitated, reformed and changed after various training sessions in prison. He prays for a lenient non-custodial sentence.
3. The Application is opposed by the prosecution. Vide oral submissions before this court on 1<sup>st</sup> April 2025, Counsel P. Mwangi submitted that following the Supreme Court decision in E018 of 2023 delivered on 12<sup>th</sup> July 2024, the mandatory minimum sentences under the Sexual Offences Act are legal and not outlawed. He submitted that section 3(i) a of the SOA

provides for a mandatory minimum sentence of 10 years and that the sentence meted to the applicant was proper.

4. It was submitted further that option for review of mandatory minimum sentences meted out under the Sexual Offences Act is not available for the Applicant in the circumstances.
5. I have considered the Application for revision of the 10-year sentence to a non-custodial sentence and note that a minimum mandatory sentence cannot be revised downwards neither can this court substitute it with a non-custodial sentence. Taking into account that the Supreme Court had already pronounced itself on the issue of mandatory minimum sentences, this court is inclined to abide by those directions emanating from the court of the highest authority. The Supreme Court in **R vs Evans Nyamari Ayako Petition E013 of 2024(2025)KESC 16(KLR)** held *inter alia* that:

***“In view of the foregoing, we find that the Court of Appeal ought not to have proceeded to set a term sentence of thirty (30) years as a substitution for life imprisonment, as the effect would be to create a provision with the force of law while no such jurisdiction is granted to it. The term of thirty years was arrived at arbitrarily without involvement of Parliament and the people. In consequence, we find that the Court of Appeal ventured outside its mandate and powers.”***

6. ***The upshot is that this application is dismissed. The Applicant will therefore serve for the remaining period of the 10 year sentence taking into account remission.***

**DATED, SIGNED AND DELIVERED** IN OPEN COURT THIS **13<sup>TH</sup>**  
DAY OF **NOVEMBER, 2025.**

**HON. T. W. Ouya**

**JUDGE**

**For Applicant.....(Daniel Muthoga Present in person)**

**For Respondent.....Mwangi P**

**COURT ASSISTANT.....Brian**

**ORIGINAL**