



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E169/2024

JOSHUA MUNYASIA NDUTI VS THE REPUBLIC

### RULING

This matter arises from an application by the Applicant, Joshua Munyasia Nduti, seeking a further review of his sentence pursuant to Section 364 of the Criminal Procedure Code. The Applicant was convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act in Criminal Case No. 1178 of 2013 before Hon. E. Mutunga (SRM) at Mombasa. He was sentenced to life imprisonment.

Upon appeal in High Court Criminal Appeal No. 52 of 2019, the conviction and sentence were upheld. Subsequently, in Misc. Application No. E116 of 2022 before Hon. A. Ong'injo J, his sentence was reviewed and reduced to thirty-five (35) years imprisonment.

The Applicant has now approached this Court once more seeking a further review of the said sentence on the basis of age, rehabilitation, and other mitigating factors.

### **The Applicant's Case**

The Applicant, who is currently 68 years old, contends that he is a first offender, remorseful, and has undergone several rehabilitative and theological courses while in custody. He further states that he has a wife, five children, and grandchildren who depend on him and who have suffered greatly as a result of his incarceration. He argues that the thirty-five-year sentence is effectively a life sentence given his age and the national life expectancy statistics as outlined by the World Health Organization.

He relies on Sections 364, 216, and 329 of the Criminal Procedure Code, the Judiciary Sentencing Policy Guidelines, and case law including *Vinter & Others v. United Kingdom*, *Yussuf Dahar Arog v. Republic*, and *Ali Abdalla Mwanza v. Republic* to urge the Court to consider proportionality and



rehabilitation in sentencing.

**The Court’s Consideration**

The Court has considered the application, the grounds advanced, and the sentence review report filed. The report, however, appears contradictory as it refers to a much younger inmate still undertaking secondary education, which is inconsistent with the Applicant’s age and representations.

The Court notes that the Applicant was convicted of a grave offence involving the defilement of a three-year-old child. He is HIV positive, and the act exposed the victim to severe, lifelong trauma. This factor underscores the seriousness of the offence and the need for both deterrence and community protection.

While the Court acknowledges the Applicant’s rehabilitative efforts and his age, these factors cannot outweigh the need for justice to the victim and society. The sentence of thirty-five (35) years, which was already a reduction from life imprisonment, remains just and proportionate to the offence committed.

**Conclusion**

He deserved to be kept away from society as per the Sentence Policy Guidelines Clause 1.3.1.(II) Deterrence and 1.1.1.(IV) Community Protection.

He does not qualify under section 3.3 which deals with the elderly and terminally ill persons. Consequently, the Application is dismissed.

For the foregoing reasons, the Court finds no merit in the present application. The request for a further review of sentence is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS ....14.... DAY OF ...NOVEMBER....., 2025.

.WENDY KAGENDO.....  
JUDGE  
HIGH COURT OF KENYA AT MOMBASA

IN THE PRESENCE OF;

THE APPLICANT IN PERSON

MR NGIRI FOR THE STATE

MS BEBORA COURT ASSISTANT



SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2025-11-15 10:59:55

