



**Chepkwony v Republic (Criminal Miscellaneous Application  
E155 of 2024) [2025] KEHC 17135 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL MISCELLANEOUS APPLICATION E155 OF 2024**

**PN GICHOHI, J  
NOVEMBER 20, 2025**

**BETWEEN**

**PHILLIP KIPKOECH CHEPKWONY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Applicant's Notice of Motion filed on 22<sup>nd</sup> August, 2024, seeking for the following Orders:-
  1. The application be certified urgent and be heard on a priority basis.
  2. The honorable court be pleased to review the application sentence and consider appropriate sentence devoid of the mandatory life sentence which has since be declared unconstitutional
  3. The honorable court be pleased to issue any other order it may deem fit for the interest of justice.
2. The Application is based on the supporting Affidavit of even date stating that he was charged with defilement under Section 8(1) and (2) of the *Sexual Offences Act* No. 3 of 2006 in Criminal Case Number 830 of 2004 before the CM's Court Nakuru. He was found guilty and sentenced to life imprisonment.
3. Dissatisfied with that decision, he appealed to the High Court at Nakuru, vide Criminal Appeal No. 128 of 2005, but his appeal was dismissed. He further lodged an Appeal to the Court of Appeal at Nakuru through Criminal Appeal number 133 of 2009 but the same was dismissed on 29<sup>th</sup> May, 2009.
4. The Applicant is now seeking a re-hearing of his sentence, arguing that this Court has jurisdiction to hear his re-sentence and met out appropriate sentence in line with the decisions in William Kittany V EKLR Criminal Appeal No. 56 of 2013 [2018] eKLR, Mutheura Ntoribi Misc. Application No. 4 of



2015 at Meru High Court and Philip Mueke Maingi & 5 others v Director of Public Prosecutions & another [2022] KEHC 13118 (KLR) in Machakos High Court, which held that individuals convicted of sexual offences with mandatory minimum sentences are at liberty to petition the High Court for re-sentencing in appropriate cases.

5. The Respondent has opposed the application through the Replying Affidavit sworn on 23<sup>rd</sup> January, 2025 by James Kihara, a Prosecution Counsel at the Office of the Director of Public Prosecution.
6. He confirmed that the applicant was charged with defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. After a full trial, the Molo Law Court found him guilty and sentenced him to life imprisonment on 6<sup>th</sup> May, 2004.
7. That the applicant appealed the sentence in the High Court (Criminal Appeal 128 of 2005 at Nakuru), and the appeal was dismissed. The applicant further appealed in the Court of Appeal (Criminal Appeal 133 of 2009), and that appeal was also dismissed. The applicant is now praying for a review of sentence before the current High Court.
8. The prosecution opposes the application, arguing the High Court cannot review a sentence handed down by a court of equal stature, and since the matter has been heard, the court is functus officio and cannot alter the sentence. The Prosecution reiterated that the applicant has exhausted all appeal avenues, and the prosecution views this application as an abuse of the court process.
9. The prosecution confirms that the cited Section 163(7) of *the Constitution* which states all courts are bound by Supreme Court decisions is correct, but argues this High Court cannot revisit a judgment delivered.
10. Furthermore, the precedents cited by the applicant lack basis as they have been overtaken by events and new precedents.

### **Applicant's Submission**

11. The Applicant confirms that he was charged with defilement contrary to section 8(1) as read with 8(2) of the Sexual Offence Act, found guilty, and sentenced to life imprisonment on 6<sup>th</sup> May, 2004, at Molo Law Court. He is seeking a re-sentencing hearing and expresses that while human mistakes can be irreversible, he is remorseful and seeks leniency for a lesser and lighter sentence.
12. The Applicant submitted that he has conducted a thorough soul search, taken full and personal responsibility for the crime, and regrets his part in it. He expresses profound regret and apology for the loss incurred by the victim and society. He condemns crime and urges youths to exercise self-control and morality. He believes the 20 years he has spent in custody have served the purpose of sentencing and transformed his life.
13. He admits he caused serious pain and agony to an innocent family and personally asks for forgiveness from God, the court, the state, and the affected family. He has been incarcerated since his arrest on 6<sup>th</sup> May, 2004.
14. He was 26 at the time of the offence and is now 47 years old, asking for a second chance to have a good life with his family. He hopes to use the future to correct his wrong and teach others an upright life.
15. Despite the life sentence, he has focused on his life in custody, deciding to admit his faults and transform. Through programs in the correctional facility, he attained a K.C.P.E certificate after sitting for STD 8 exams. He started secondary school (Form 1 to 3) but could not complete it due to an illness



from which he is still unwell. He asks the court to consider his achievements and states he is a better man, a role model, and a hardworking citizen. His wife and son are still waiting for him.

16. He submits that if the court imposes a custodial sentence, the period spent in custody since the date of arrest be taken into account as per Section 333(2) of the Criminal Procedure Code. He prays for any other appropriate orders in the interest of justice and for the success of his application

### **Analysis and determination**

17. After considering the application, Affidavits and submissions, the main issue for determination is whether this Court has jurisdiction to revisit and re-hear a sentence that has already been upheld on appeal by a court of concurrent jurisdiction.
18. The Applicant's argument is that since the life imprisonment was declared unconstitutional, this Court should substitute his sentence of life imprisonment with another lenient sentence, claiming that he has reformed.
19. The Applicant has heavily relied among other cases the case of Maingi & 5 others v Director of Public Prosecutions & another [2022] KEHC 13118 (KLR), where G.V Odunga J (As he then was) held that:-

“to the extent that the *Sexual Offences Act* prescribe minimum mandatory sentences, with no discretion to the trial court to determine the appropriate sentence to impose, such sentences fall foul of Article 28 of *the Constitution*. However, the Court are at liberty to impose sentences prescribed thereunder so long as the same are not deemed to be the mandatory minimum prescribed sentences. b) taking cue from the decision in Francis Karioko Muruatetu & Another v. Republic [2017] eKLR(Muruatetu 1) those who were convicted of sexual offences and whose sentences were passed on the basis that the trial Courts had no discretion but to impose the said mandatory minimum sentence are at liberty to petition the High Court for orders of resentencing in appropriate cases.”
20. However, in the case of Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR), the Supreme Court handled an Appeal from the Court of Appeal that challenged the Court of Appeal's holding that the sentence of life imprisonment under the Sexual Offences Act was unconstitutional and in the decision rendered in April this year, the Supreme Court held that the Court of Appeal erred in substituting the life imprisonment sentence with a 40-year sentence. The Court affirmed that legislative authority is vested in Parliament, which defines sentences and the Courts' roles are confined to interpreting and adjudicating the constitutionality of a statute, not rectifying or amending it.
21. The Supreme Court had previously recommended that the Attorney General and Parliament develop legislation to define 'what constitutes a life sentence,' suggesting that this function falls within the realm of the Legislature, not the Judiciary and therefore, by defining a life imprisonment to be 40 years, the Court of Appeal usurped legislative powers.
22. Further the Supreme Court in Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) held that the Court of Appeal acted ultra vires and usurped legislative powers by substituting a life imprisonment sentence with a 30-year term, as the constitutionality of life imprisonment had not been initially litigated at the High Court, which is the court of first instance for constitutional interpretation.
23. The Supreme Court emphasized that defining the parameters of sentences, including life imprisonment, is a function of Parliament, not the Judiciary, and that such a decision by the Court of Appeal arbitrarily created law without legislative involvement or public participation.



24. Furthermore, the Court found that the Court of Appeal violated the doctrine of stare decisis by misapplying the ratio decidendi from *Muruatetu I* (which specifically dealt with the mandatory death penalty for murder) to other offences with mandatory or minimum sentences. Consequently, the Supreme Court allowed the appeal, reinstated the High Court's judgment, and ordered that the respondent serve life imprisonment as originally sentenced by the Magistrates' Court. The Court also criticized the Office of the Director of Public Prosecutions for its inconsistent stance, supporting a term sentence at the Court of Appeal and then appealing against it, stating that such conduct erodes public confidence in the justice system.
25. The Supreme Court has consistently affirmed that mandatory life imprisonment in Kenya remains constitutional. This means that the indefinite nature of a life sentence under Section 8 (2) of the *Sexual Offences Act* cannot be redefined to include a specific end date. For such a change to occur, Parliament would need to amend the law, as explicitly stated by the Supreme Court.
26. In this particular case, the Applicant was sentenced by the trial court to life imprisonment under the aforementioned Section 8(2) of the Sexual Offences Act. His appeal in High Court and Court of Appeal were both dismissed in its entirety.
27. The Applicant's current application for resentencing was predicated on the belief that mandatory sentencing had been declared unconstitutional. However, in light of the definitive Supreme Court decisions, his prayer for resentencing cannot be granted. Accordingly, his prayer that any custodial sentence imposed be considered taking into account Section 333 (2) of the Criminal Procedure Code also fails. He has no recourse before this Court.
28. Consequently, the Applicant's application, filed on 22<sup>nd</sup> August, 2024 is therefore dismissed.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Phillip Kipkoech Chepkwony -Applicant

Mr. Kihara for the Respondent

Kamau, Court Assistant

