



**Masika v Republic (Miscellaneous Criminal Application E140 of 2025)  
[2025] KEHC 17734 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17734 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CRIMINAL APPLICATION E140 OF 2025  
MS SHARIFF, J  
NOVEMBER 17, 2025**

**BETWEEN**

**LEONARD SIFUNA MASIKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Petitioner Leonard Sifuna Masika was charged and convicted of the offence of rape contrary to Section 3 (a) of the Sexual Offences Act No. 3 of 2006 in Bungoma CM CR Case No. 3238 of 2015. He was sentenced to serve 49 years jail term.
2. The petitioner's subsequent appeals in Bungoma HCCRA No. 123 of 2017 and Kisumu Court of Appeal CR A No. E003 of 2021 were dismissed.
3. The Petitioner subsequently filed Bungoma HC CR Misc. Application No. E140 of 2025 and a replica of the same application as Bungoma High Court Petition No E010 of 2025. I have duly struck out the Miscellaneous Application No. E140 of 2025 on grounds of multiplicity.
4. The Petition herein is unopposed.
5. The Petitioner avers that he was not accorded a fair hearing at the time of sentencing and that his rights as enshrined under article 27 (1), (2) (4) and article 51 (1) of the Constitution of Kenya 2010 have been violated, as he is entitled to full benefit of the law.

**Analysis and determination**

6. I have duly considered the application herein, the affidavit in support thereof and the enclosures attached thereto and the sole issue that arises for determination is whether the Petitioner's right to a fair trial were violated by the trial court during sentencing. Both the High court and the Court of Appeal had the occasion to consider the Petitioner's appeal and one of the grounds that was raised in



both appeals was that the sentence of 49 years imprisonment was harsh. Both court found that the trial court gave a detailed account of the reasons it meted out that sentence. It is instructive to note that the minimum mandatory sentence prescribed under Section 3 (3) of the *Sexual offences Act* No 3 of 2006 is 10 years which can, depending on the circumstances of each case enhanced to life sentence. Given that this court already rendered itself on this issue, this court is thus functus officio. In any event I am bound by the decision of the Court of Appeal in this matter.

7. It is instructive to note that the Supreme Court rendered itself on the legality of mandatory minimum sentences as prescribed under the *Sexual Offences Act* when it considered the provisions of Section 8 of the said Act in Petition No. 18 of 2023: Republic vs Joshua Gichuki Mwangi & Others. It is thus trite that the provisions of Section 3(3) of the *Sexual Offences Act* are lawful.
8. The Petitioner herein was never discriminated against and he has already exhausted his two levels of appeal. It cannot therefore be said that his rights to a fair hearing were violated by the imposition and confirmation of the 49 years custodial sentence on both appeals.
9. On the balance I do find that based on the reasons aforesated, this petition is devoid of merit and I hereby dismiss it in its entirety.
10. This file is herby marked as closed.

**DELIVERED, SIGNED, AND DATED AT BUNGOMA THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**MWANAISHA S. SHARIFF**

**JUDGE.**

