

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CRIMINAL MISC E010 OF 2024**

**ALFRED KIMTAI KIPKOSGEI.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDEN**  
**T**

**Coram: Before Hon. R. Nyakundi**  
**M/s Sidi for the State**

**RULING**

1. Before this Court is an Application dated 8<sup>th</sup> January 2024. The Applicant sought for the following prayers;
  - a. Spent
  - b. That I am the Applicant seeking for sentence review in Cr. 2395/2015 for the offence of defilement contrary to Section 8(1) of the Sexual Offence Act No. 3 of 2006 where the Applicant was sentenced to serve life sentence.
  - c. That under the provisions of the Constitution of Kenya 2010 and Practice and Procedure Rules 2010 this court has power to hear and determine infringements of fundamental rights and award remedies.
2. The Application is supported by an Affidavit sworn by Alfred Kimtai Kipkosgei stating as follows;
  - i. THAT, I am a Kenyan male adult of sound mind and duly competent to swear this affidavit in a Court of law.
  - ii. THAT, I was charged and convicted for the offence of defilement contrary to section 8(1) as read with section 8(2) of the sexual

- offenses act no 3 of 2006 in criminal case no. 2395 of 2015 at Eldoret CM's Court.
- iii. THAT, my first appeal to the High Court was dismissed in its entirety vide HCCRA no. 146 of 2015 at Eldoret was dismissed.
  - iv. THAT, I have no pending appeal thus this application herein for sentence review only pursuant to article 50(2)(q) of the Constitution of Kenya 2010.
  - v. THAT, the High Court at Machakos in Petition No. E017 of 2021 Philip Mueke Maingi & 5 Others vs DPP- Machakos declared that court discretion in sentencing should not be fettered by mandatory minimum sentencing provisions.
  - vi. That, I also make this application in reliance with court of appeal decision in Criminal Appeal No. 12 of 2021 JULIUS KITSALO MANYESO vs Republic at Court of Malindi
  - vii. THAT, this Honorable Court is seized of competent jurisdiction under Article 165(3)(b) of the Constitution of Kenya 2010 to hear and determine this matter.
  - viii. THAT, I am a pauper who cannot incur any costs for preparation of this application thus pray that such costs be waived.
  - ix. THAT, I swear that all I have deposed herein above is true and correct to the best of my knowledge, information and belief.

## **Decision**

3. The Applicant in this case seeks review of life sentence imposed under the prescription provided for by Parliament in consonant with Section 8(1) as read with Sub-section 2 of the Sexual Offence Act 2006 dealing with defilement offences against children under the age bracket of 11 years. Sentencing regime in Kenya is yet to settle down if the principles developed by various superior courts from the Supreme Court decision of **Francis Karioko Muaruatetu & Another vs Republic [2017] KESC 2** is anything to go by; *“in this landmark case, Kenya’s Supreme Court*

*found that the mandatory nature of the death penalty for murder was unconstitutional because it removed judicial discretion in sentencing.”* From this one decision, the court the changed the typology and the framework of sentencing in Kenya. In the same decision the court also observed that *every offender, including those facing a death sentence, has a right to be heard in mitigation before sentencing. This decision paved way for resentencing hearings those sentenced to the mandatory death penalty.*

4. The Superior Courts riding on this protocol of Muruatetu moved with speed and declared other mandatory sentences other than death to be un-constitutional. This observation can be supported by the dicta in the following cases; **Dismas Wafula Kilwake vs Republic [2018] eKLR, Gachingiri vs Republic [2024] KEHC 2735 and Philip Mueke Maingi & 5 Others vs Director of Public Prosecutions & Another [2022] KEHC 13118.**
5. This is no longer good law in Kenya as the same Supreme Court in the cases of **Republic vs Juius Kitsao Manyeso [2025] KESC 16 (KLR)** and **Republic vs Joshua Gichuki Mwangi [2024] KESC 34 (KLR)**. In these cases, the Supreme Court affirmed that the life sentence for defilement of a child aged 11 years or less lawful and constitutional. These decisions reversed what Kenyans thought were gains made in the scheme of sentencing of mandatory sentences. What were the key issues alluded by the Supreme Court;
  - **Life imprisonment is reinstated:** *The Supreme Court explicitly stated that the life imprisonment penalty for defilement of a child under 11 years, as prescribed by Section 8(2) of the Sexual Offences Act, is constitutional. In the Manyeso case, the court reinstated a life sentence that the Court of Appeal had reduced to 40 years.*

- **Upholding the separation of powers:** *The Supreme Court reiterated that it is the role of Parliament, not the judiciary, to enact or change sentencing laws. The Court of Appeal had overstepped its authority by substituting a sentence defined in a statute, thereby violating the separation of powers.*
  - **Mandatory versus minimum sentences:** *The Supreme Court clarified that the Muruatetu ruling—which dealt with mandatory death sentences for murder—does not automatically apply to the mandatory minimum sentences found in the Sexual Offences Act. Unlike a mandatory death sentence, a "minimum" sentence sets the floor but still leaves some room for judicial discretion.*
  - **Accessing the rulings:** *You can find the PDF documents for these judgments on the Supreme Court of Kenya website and the Kenya Law Reports database by searching the case names and citation.*
6. Given the above background, the life imprisonment being challenged by the the Applicant is not justiciable, and the same is dismissed for want of merit under Section 382 of the Criminal Procedure Code.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 2<sup>ND</sup> DAY OF DECEMBER, 2025**

.....  
**R. NYAKUNDI**  
**JUDGE**