



**Maina v Republic (Criminal Miscellaneous Application
E063 of 2023) [2026] KEHC 478 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E063 OF 2023**

**JM NANG'EA, J
JANUARY 27, 2026**

BETWEEN

ROBERT MACHARIA MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged, convicted and sentenced to life in prison for the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the [Sexual Offences Act](#) No. 3 of 2006 before the Magistrate's Court at Nakuru in Criminal Case File No. S.O 235 of 2008. The particulars of the offence state that on the 17th day of December 2008 at Njoro Posta in the then Nakuru District, Nakuru County, the Applicant intentionally and unlawfully caused his penis to penetrate the anus of PMM, a child aged 11. He denied the charge.
2. The Applicant is now seeking re-sentence rehearing, seeming to complain that minimum mandatory sentence prescribed for the offence of which he was convicted is unconstitutional.
3. The Applicant and the Prosecution Counsel (Mr Wakasyaka) filed submissions which I have perused against the Application.
4. The Constitutional and Human Rights Court's decision in consolidated Petitions Nos. 5 and 6 of 2022 (Ramadhan & 8 others vs Attorney-General and Another 2024 KEHC 1173 (KLR) (6 February 2024) (Judgement) and Machakos High Court case, Philip Mueke Maingi & Others vs Republic, drawing from jurisprudence in the famous Supreme Court case of Francis Karioko Muruatetu, had concluded that minimum mandatory sentences prescribed for offences such as the Applicant was convicted of herein were declared unconstitutional for fettering judicial discretion to determine an appropriate sentence based on the peculiar facts and circumstances of each case. A similar opinion was expressed in this court's decision in William Okungu Kittiny vs Republic (2018) eKLR.



5. The Supreme Court in what has come to be known as the Muruatetu 2 decision has, however, clarified that its earlier judgement in the Muruatetu 1 declaring the mandatory nature of the death sentence for the offence of murder as unconstitutional, only applied to murder cases. The apex court's more recent decision in Constitutional Petition No. 018 of 2023 (Republic vs Joshua Gichuki Mwangi & Others also referred to by the Respondent reiterates the position and exhorts litigants wishing to challenge laws prescribing mandatory and/or minimum sentences for offences other than murder to mount the challenge from the High Court, and if necessary escalate the dispute to the Court of Appeal, for a final decision to be made. The Supreme Court's decision in the Muruatetu 1 case does not therefore apply to defilement cases for the reasons given. The Applicant was lawfully sentenced.
6. The Application is accordingly dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 27TH DAY OF JANUARY, 2026

In the presence of:

The Prosecution Counsel, Mr Wakasyaka

The Applicant, present

The Court Assistant, Jeniffer

J. M. NANG'EA, JUDGE.

