

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**HCCR MISC APPL. NO. E157 OF 2024**

IN THE MATTER OF ARTICLES 22(1), 23(1), 165 AND 397 OF THE  
CONSTITUTION OF KENYA.

AND

IN THE MATTER OF SECTION 329 OF THE CRIMINAL PROCEDURE CODE

AND

IN THE MATTER OF THE HIGH COURT JUDGEMENT PETITION NO. E017  
OF 2021 AT MACHAKOS; PHILIP MUEKE MAINGI AND OTHERS

AND

IN THE MATTER OF HIGH COURT AT NAKURU HCCRA NUMBER 66 OF  
2018

AND

IN THE MATTER OF THE HIGH COURT AT NAKURU CRIMINAL MISC.  
APPL. NUMBER E011 OF 2022

AND

IN THE MATTER OF CM'S COURT AT NAKURU CRIMINAL CASE NUMBER  
1733 OF 2013

BETWEEN

NAHASHON NDIRANGU MWANGI.....APPLICANT

VERUS-

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

**RULING**

1. By a Notice of Motion dated 31<sup>st</sup> July, 2025, the Applicant sought the following Orders:-
  - 1) *The application be certified urgent and be heard on a priority basis.*
  - 2) *The honourable court be pleased to grant a re-hearing of the sentence in CM's Court Nakuru Criminal Case Number 1733 of 2013.*
  - 3) *The honourable court be pleased to receive mitigation from the applicant herein for consideration of an appropriate sentence.*
  - 4) *The honourable court be pleased to issue any other order it may deem fit for the interest of justice.*

2. The Application is supported by the affidavit sworn on 31<sup>st</sup> July, 2025. He stated that he was charged before the Magistrate Court at Nakuru for the offence of defilement under Section 8(1)(3) of the Sexual Offences Act No. 3 of 2006, in Criminal Case Number 1733 of 2013.
3. After the trial, he was found guilty and subsequently sentenced to serve 20 years imprisonment on 17<sup>th</sup> August 2018. Dissatisfied with that decision, he appealed to the High Court at Nakuru in High Court Criminal Appeal Number 66 of 2018. The High Court found his appeal without merit, and it was dismissed.
4. However, he stated that this Court is bound by the Supreme Court decisions as provided for under Article 163(7) of the Constitution.
5. He avers that the High Court of Kenya at Machakos in the case of ***Philip Mueke Maingi & 5 others v Director of Public Prosecutions & another [2022] KEHC 13118 (KLR)***, ruled that those who were convicted for the sexual offenses and whose sentences were passed on the basis that the trial Court had no discretion but to impose the said mandatory minimum sentences are at the liberty to petition the High Court for Orders of resentencing in appropriate case.
6. It is on that note that he states that this Court has jurisdiction to hear resentencing and mete out an appropriate sentence in line with the aforementioned case. He adds that this Court will be discharging its constitutional obligation pursuant to Article 20(3)(a)(b) of the Constitution as read with the principles laid out in ***Philip Mueke Maingi*** case. He thus urged this Court to allow the resentencing.
7. The Respondent opposed the Application by the Replying Affidavit sworn on 30<sup>th</sup> October, 2025, by James Kihara, a Prosecution Counsel at the Office of the Director of Public Prosecution. He confirms that the Applicant was found guilty of defiling a 14-year-old girl in August 2013, contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act and

sentenced on 17<sup>th</sup> August, 2018, to 20 years imprisonment, which represented the statutory minimum for defiling a child between the ages of 12 and 15.

8. The deponent notes that the Applicant previously appealed this conviction and sentence in the High Court, but the appeal was dismissed, and the original trial court's findings were upheld.
9. He avers that the Applicant's current legal strategy, which relies on the *Muruatetu* and *Phillip Mueke Mwangi* cases to argue that mandatory sentences are unconstitutional and that courts should have sentencing discretion, is not true. On the contrary, he reiterates that the 20-year term served as the mandatory minimum custodial sentence required under section 8(3) of the Sexual Offences Act.
10. The deponent cites the Supreme Court in *Republic v Joshua Gichuki Mwangi [Petition No. E018 of 2023] [2023] eKLR*, arguing that mandatory minimum sentences for sexual offences remain valid and must be followed unless exceptional circumstances exist.
11. He further clarified that the total sentence is actually 23 years, including the 20-year minimum for defilement and an additional 3 years for witness interference, which the Respondent views as an aggravating factor.
12. It is the Respondent's position that the sentence was lawful and proportionate because the victim was a vulnerable minor, the Applicant actively obstructed justice through witness interference, and he has shown no remorse. He added that the 20-year sentence was actually lenient, given the gravity of the crime, and the extra 3 years were fully justified by the Applicant's attempt to undermine the judicial process.
13. The Respondent contends that legal precedents like *Muruatetu* do not automatically grant a right to resentencing for sexual offences, and the Applicant has failed to show any exceptional reasons for a departure from the law.

14. He therefore urged the court to decline the application and maintain the current sentence, asserting that it serves the principles of justice and the protection of minors, in any event that the Applicant has not provided compelling grounds for the court to exercise its discretion under the Criminal Procedure Code and should serve his full sentence.

**Respondent's Submissions**

15. The Respondent submits that the Applicant cannot obtain the orders sought, noting that his previous appeal in Criminal Appeal No. 66 of 2018 was dismissed. Consequently, the Prosecution contends that this Court is *functus officio* and cannot interfere with a judgment rendered by a court of concurrent jurisdiction or a superior court.

16. Regarding the substance of the application, the Prosecution argued that while the Applicant relies on **Phillip Mueke Mwangi & Others v Republic [Petition No. E017 of 2021]**, the current sentence of 23 years remains lawful. That the sentence comprises the statutory minimum of 20 years for the primary offence of defilement and an additional three years for witness interference, a penalty necessitated by the Applicant's intentional attempts to jeopardise the administration of justice for the child victim.

17. The Respondent further argues that the specific circumstances of the case justify the sentence, notwithstanding any mitigation offered by the Applicant. The Prosecution highlights several aggravating factors: the victim was a vulnerable 14-year-old minor, the Applicant was specifically convicted of obstructing justice through witness interference, and he has demonstrated a significant lack of remorse. Furthermore, the Respondent notes that the Applicant's challenge is limited to the sentence alone, thereby conceding the factual basis of his underlying conviction.

18. The Respondent relies on the Supreme Court's determination in **Republic v Joshua Gichuki Mwangi [Petition No. E018 of 2023]**, arguing that the Apex Court has held that mandatory minimum sentences under the Sexual

Offences Act remain valid and must be meted out without departure. In light of the gravity of the offence, the Respondent maintains that the sentence imposed was proportionate, if not lenient, and urges this Court to decline any interference, concluding that the Applicant must now face the consequences of the conduct for which he was lawfully convicted.

**Analysis and determination**

19. After considering the Applicant's Notice of Motion and the Respondent's opposing submissions, the primary issue for this Court's determination is whether the High Court, in the exercise of its revisionary jurisdiction under Section 329 of the Criminal Procedure Code, possesses the authority to revisit and re-hear a sentence that has already been affirmed on appeal by a court of concurrent jurisdiction.
20. The Applicant moves this Court for resentencing, placing primary reliance on the case of **Philip Mueke Mwangi & 5 Others v Director of Public Prosecutions & Another [2022] KEHC 13118 (KLR)**. In that matter, Odunga, J. (as he then was) held that individuals convicted of sexual offences, whose sentences were imposed under the mistaken belief that trial courts lacked the discretion to deviate from mandatory minimums, were at liberty to petition the Court for a review of their sentences.
21. It is upon this legal premise that the Applicant invites this Court to exercise its jurisdiction to revisit the sentence and lower the sentence meted against him, although his prior appeal before this Court was dismissed.
22. The Applicant herein was indeed convicted for the offence of defilement under Section 8(1) as read with Section 8(3) of the Sexual Offences Act, which stipulates the sentence for a person who commits such an offence against a child between the ages of twelve and fifteen years. Section 8(3) of the Sexual Offences Act provides that;-

***“(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”***

23. Having been so convicted, the Applicant was subject to this statutory mandatory minimum. The legislative framework provides the judicial officer with the discretion only to enhance the penalty based on aggravating factors; it leaves no room for the court to impose a term below the prescribed sentence.
24. While the Applicant’s request is predicated on the belief that mandatory sentencing has been declared unconstitutional, recent and definitive jurisprudence from the Apex Court has clarified that mandatory minimums for sexual offences must be upheld.
25. On that basis, this Court finds that the Applicant has failed to demonstrate any exceptional circumstances or legal basis to warrant the exercise of this Court's discretion. For these reasons, the Applicant’s Notice of Motion dated 31<sup>st</sup> July 2025 is dismissed for lack of merit.

**Dated, signed and delivered at Nakuru this 17<sup>th</sup> Day of March , 2026.**

**PATRICIA GICHOHI  
JUDGE**

**In the presence of:**

**Nahashon Ndirangu Mwangi Applicant**

**Ms Mwaura for Respondent**

**Erickson- Court Assistant**