



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mwangi (Criminal Application 001 of 2022)  
[2023] KECA 1041 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KECA 1041 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION 001 OF 2022  
W KARANJA, LK KIMARU & J MOHAMMED, JJA  
JULY 5, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**JOSHUA GICHUKI MWANGI ..... RESPONDENT**

*(An application seeking the leave of the Court to appeal to the Supreme Court of Kenya from Judgment and orders in Court of appeal Criminal Appeal No. 84 of 2015)*

**RULING**

1. The Notice of Motion coming up for hearing before us this morning is dated October 28, 2022 and is expressed to be premised on Article 159(2)(d)(e); 163(4)(b) of the *Constitution of Kenya 2010*, Section 15B(1)(a) and 2 of the *Supreme Court Act*, Rule 33(1) of the *Supreme Court Rules 2020*, Rule 5(2)(a) and 42 of the *Court of Appeal Rules*.
2. Although the application seeks six orders, learned counsel Mr Ondimu who represents the applicant (The Republic) has dropped the other prayers save for prayers No 4 and 5 Prayer No 4 seeks leave to be granted for the applicant to appeal to the Supreme Court of Kenya against the judgment and order of this Court delivered on October 7, 2022 in *Joshua Gichuki Mwangi Vs. Republic* (Criminal Appeal No. 84 of 2015). Prayer 5 on the other hand seeks certification under Article 163(4)(b) of *the Constitution* to the effect that the intended appeal is a matter of general public importance and involves interpretation and application of provisions of *the Constitution* of Kenya 2010.
3. After a short discussion between Mr Ondimu and learned counsel for the respondent, Mr Wahome Gikonyo, counsel have agreed that this matter transcends the interests of the respondent, who has since been released from prison. Both counsel agree that there have been several decisions from various courts, both at the High Court level and even this Court which advance the jurisprudence that mandatory minimum sentences are unconstitutional and they should not be applied indiscriminately



to all sexual offences. There is another school of thought, however, which holds the position that the mandatory aspect of sexual offences as stipulated under the [Sexual Offences Act](#) is lawful and serves the intended purpose of deterrence of sexual offenders.

4. Be that as it may, it is clear that evident guidance on this issue from the Supreme Court is necessary to enable the courts speak with one voice and create uniformity in regard to sentencing of convicted offenders in sexual offences matters.
5. In the circumstances, we allow the Notice of motion dated October 28, 2022, by consent of both counsel in terms of prayers 4 and 5 of the motion and order that this motion raises a matter of general public importance as to whether mandatory minimum sentences as prescribed in the [Sexual Offences Act](#) are unconstitutional; and whether courts have discretion to impose sentences below the minimum mandatory sentences as prescribed in sexual offences matters.

**Dated and delivered at Nyeri this 5<sup>th</sup> day of July, 2023**

**W. KARANJA**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**

