



REPUBLIC OF KENYA



KENYA LAW
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**Oyieko v Republic (Criminal Revision E086 of 2024)
[2025] KEHC 450 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 450 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E086 OF 2024**

DK KEMEL, J

JANUARY 27, 2025

BETWEEN

GEORGE OTIENO OYIEKO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner George Otieno Oyieko was convicted and sentenced to serve life sentence 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 vide the judgment of Bondo PM's Court Sexual Offence No. 1690 of 2010.
2. The Petitioner being dissatisfied with the decision of the trial court, he lodged an application against the conviction and sentence vide Siaya High Court Criminal Appeal No. 111 of 2011 which was dismissed and that he further filed an appeal at the Court of Appeal vide C.O. A No. 88 of 2012 and that the same was dismissed for lack of merit.
3. The Petitioner avers inter alia that the minimum mandatory sentence under [Sexual Offences Act](#) is unconstitutional and not warranted on plea. That the life sentence is unconstitutional, degrading, inhuman, harsh, manifestly excessive, disproportionate and offends article 20 of the [Constitution of Kenya](#) 2010. That he has spent 14 years in prison thus has met the necessary deterrence, punishment and community protection and thus he no longer poses any threat to the public. That he underwent various rehabilitation programs while in prison and attained National Industrial training certificate in painter, Grade test II and Grade test III, National trade test in polisher Grade II and III, theological certificate in lamp and light bible correspondence courses up to level III, Nuru Lutheran Media Ministry certificate; certificate of participation in the Alpha course training; baptism card from protestant church. That life sentence is discriminative and gives no chance to rehabilitation and reformation as it has no limit. That he is old enough and that his stay in custody is no longer of beneficial value. That the Petitioner is a first offender, remorseful, rehabilitated, a family man of life and



two school -going children and sole bread winner. That he is a pauper and layman and hence cannot raise the required fee to process this matter.

4. It is worth noting that this court had already made a determination on this matter thus rendering it *functus officio*.
5. It is not in dispute that the Applicant being aggrieved with the outcome of the trial court, and that of the High Court, he did lodge an appeal against conviction and sentence at the Court of Appeal vide COA No. 88 of 2012 which was later dismissed.
6. The Petitioner is now back vide this Criminal Petition No. 86 of 2024 seeking review of his sentence.
7. I have considered the Petitioner's Notice of motion and affidavit in support. It must be noted that this court having already rendered a decision on the matter, it became functus officio. It is instructive that vide the Supreme Court of Kenya Petition No. 18 of 2023 *Republic v Stephen Gichuki and Others* [2023] eKLR, the imposition of minimum sentences under the *Sexual Offences Act* No. 3 of 2006 is lawful as long as the said Act has not been declared unlawful. Hence, the sentence passed against the Applicant is lawful by all standards. As this court is already functus officio, the present application cannot be entertained by it. It seems the Petitioner is now engaging in lottery with the court and which is not countenanced.
8. I find this petition dated 20th May, 2024 devoid of merit. The same is hereby dismissed.

DATED AND DELIVERED AT SIAYA THIS 27TH DAY OF JANUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

George Otieno Oyieko Applicant

M/s Mumufor Respondent

OgendoCourt Assistant

