



**Ngugi v Republic (Miscellaneous Application E041 of 2023)
[2025] KEHC 2816 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E041 OF 2023**

A MSHILA, J

FEBRUARY 28, 2025

BETWEEN

LAWRENCE MUCHINA NGUGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is an application for sentence review in which the Applicant prays that the court be pleased to grant him a lenient definite sentence informed by his mitigation and the unique circumstances of his case pursuant to Article 50 (2)(p)(q) of the *Constitution*; that the period spent in custody be computed into the eventual sentence to be awarded pursuant to section 333(2) of the *Criminal Procedure Code* and that he be granted probation orders if circumstances fit.
2. The Applicant was charged with the offence of defilement c/s 8(1)(3) and an alternative count of Indecent Act c/s 11(1) of the *Sexual Offences Act* No.3 of 2006. in Criminal Case No.534 of 2007 at Kikuyu Law Courts. The particulars of the offence were that on 16th June, 2007 at [Particulars withheld] Village within Kiambu County, the Applicant jointly with others not before the court, intentionally and unlawfully defiled EW a girl aged 14 years;
3. The Applicant was convicted and sentenced on 7/09/2009 to life imprisonment. He has exhausted all avenues of appeal. He appealed to the High Court Nairobi in HCCRA No.457 of 2009 and the appeal was dismissed. He further appealed to the Court and Appeal in Nairobi Court of Appeal in Criminal Appeal No.367 of 2011 and the same was still dismissed. He approached the Constitutional & Human Rights Court through a Constitutional Petition No.17 of 2019 challenging the manner in which he was sentenced and sought to review his sentence and to substitute the life sentence with an appropriate lenient definite sentence. He was successful in his challenge on the constitutionality of his sentence; The court then directed he be produced before the trial court in Kikuyu for resentencing; He has again approached this Court by way of a miscellaneous application seeking for a review of his sentence



The Applicant's Submission

4. The petitioner filed written submission in which he averred that this Court has jurisdiction to entertain the matter under Article 165 (3)(d) of the Constitution. The life sentence imposed on him is cruel, inhuman and a degrading punishment that violates his human rights. The petitioner's fundamental rights and freedoms were breached because he was sentenced to serve an inhuman sentence and that his mitigation was not considered.
5. The Petitioner stated that life sentence is unconstitutional and that the court can impose a sentence other than life in a case of defilement. Such a sentence fetters the court's discretion in imposing an appropriate sentence based on mitigation and the unique facts and circumstances of the offence.
6. The Petitioner submitted that Section 8(3) of the Sexual Offences Act is inconsistent with Article 27 of the Constitution which guarantees every person equality before the law. Convicts sentenced under Section 8(3) of the Sexual Offences Act are not accorded equal treatment to convicts who are sentenced under sections of the Penal Code that do not mandate a death or life sentence. A convict of defilement, unlike convicts of other offences are denied the right to be heard in mitigation. This is discrimination contrary to Article 27 of the Constitution.
7. He averred that life imprisonment is unconstitutional and the court should fix a determinate number of years of imprisonment. An indeterminate life sentence is contrary to Article 28 and Article 29(d) and (f) of the Constitution and denies the prisoner any avenue for review. He relied on Manyeso v Republic (Criminal Appeal 12 of 2021) [2023] KECA 827(KLR) (7 July 2023)(Judgement) and Boniface Keya v Republic Misc. Criminal Application No. E007 of 2023.

Issue for Determination

8. The issue for determination is whether this court should review the sentence meted out to the petitioner.

Analysis

9. This Court has jurisdiction under Article 165(3) of the Constitution to determine cases where the rights and fundamental freedoms of citizens under the Bill of Rights have been violated.
10. The Applicant now seeks for review of sentence on the basis that the mandatory life sentence imposed on him was unconstitutional because by statute it is the only sentence that must be imposed. This takes away the discretion of the court in hearing mitigation and in sentencing. The court's discretion in sentencing pertains to fair trial and any law which precludes exercise of discretion by a court in sentencing in particular offences sets apart those affected is outright discrimination contrary to Article 27 of the Constitution. Such discrimination justifies a cause of action under Articles 23 and 165(3) of the Constitution for redress for violation or threatened violation of a right and or fundamental freedom enshrined in the Bill of Rights.
11. Upon careful perusal of the court record this Court notes that the issue of the constitutionality of the sentence meted upon the Applicant herein had already been heard and determined by Hon. Justice Mrima in Petition No.17 of 2019 whereby the learned Judge made the following orders:-

- (i) A declaration be and hereby issue that the Petitioner's right against discrimination and the right to equal protection and equal benefit of the law under Article 27(1) of the Constitution were infringed.



- ii. A declaration be and hereby issue that the Petitioner’s right to inherent dignity and the right to have that dignity respected and protected under Article 28 of the Constitution were infringed.
- iii. A declaration be and hereby issue that the Petitioner’s right not to be treated or punished in a cruel, inhuman or degrading manner under Article 29(f) of the Constitution was infringed.
- iv. A declaration be and hereby issue that the minimum mandatory sentence of life imprisonment passed against the Petitioner in Kikuyu Principal Magistrates Court Criminal Case No. 534 of 2007 *Lawrence Muchina Ngugi v Republic* on 7th September, 2009 and which sentence was upheld in Nairobi High Court Criminal Appeal No. 457 of 2009 and in Nairobi Court of Appeal Criminal Appeal No. 367 of 2011 is unconstitutional.
- v. An order of judicial review by way of certiorari be and is hereby issued to bring into this Court and quash the sentence of life imprisonment passed against the Petitioner in Kikuyu Principal Magistrate Court Criminal Case No. 534 of 2007 *Lawrence Muchina Ngugi v. Republic* on 7th September, 2009 and which sentence was upheld in Nairobi High Court Criminal Appeal No. 457 of 2009 and in Nairobi Court of Appeal Criminal Appeal No. 367 of 2011.
- vi. The Petitioner herein, Lawrence Muchina Ngugi, shall be presented before the Principal Magistrates Court at Kikuyu in Criminal Case No. 534 of 2007 *Lawrence Muchina Ngugi v. Republic* for re-sentencing.”

12. In light of the above order this Court is satisfied that the matters arising from the instant application have been dealt with by a competent court and this Court cannot sit as an appellate court on a decision of a court with concurrent jurisdiction. But this Court has supervisory jurisdiction over the subordinate court and hereby invokes its inherent supervisory jurisdiction under the provisions of Section 362 and 364 of the Penal Code and remits the file back to Kikuyu Law Court for it to properly attend to the matter as directed by the Honorable Judge in the Orders given on 1/07/2021 in Petition No.17/2019.

Findings & Determinations

- 13. This Court, having found that the orders sought have already been adjudicated and determined by a competent court of concurrent jurisdiction thus rendering the instant application as incompetent.
- 14. As per the Order made on 1/07/2021 the Applicant herein be presented before the Principal Magistrates Court at Kikuyu in Criminal Case No.534 of 2007 *Lawrence Muchina Ngugi v Republic* for re-sentencing.
- 15. The trial court file to be remitted back to Kikuyu Law Courts;
Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF FEBRUARY, 2025.

A. MSHILA

JUDGE



In the presence of;

Sanja - Court Assistant

Magero – for the State

Applicant – present at Kamiti

Language - Kiswahili

