



**Bett v Republic (Miscellaneous Criminal Application E054 of 2022)
[2025] KEHC 1718 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E054 OF 2022**

**JM NANG'EA, J
FEBRUARY 25, 2025**

BETWEEN

DAVID KIPNG'ENO BETT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to life in prison for 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 Molo in Criminal Case File No. 1477 of 2013 . He lodged an appeal with this court at Kericho through Appeal File No. 02 of 2016 which appeal was dismissed. He preferred a second appeal to the Court of Appeal at Nakuru vide File No. 94 of 2019 which was marked as withdrawn by order of the court issued on 10/07/2024.
2. The applicant is now seeking re-sentence rehearing, complaining that minimum mandatory sentence prescribed for the offence of which he was convicted is unconstitutional. Reliance is placed on Machakos High Court case, *Philp Mueke Maingi & Others v. Republic*, in which such minimum mandatory minimum sentences prescribed for offences such as the applicant was convicted of herein were declared unconstitutional. The applicant avers that convicts like himself who had been wrongly sentenced were advised to go back to court for re-sentencing, hence this application.
3. The Prosecution Counsel did not file her submissions in good time.
4. The Constitutional and Human Rights Court's decision in consolidated Petitions Nos. 5 and 6 of 2022 (*Ramadhan & 8 Others v. Attorney-General and Another* 2024 KEHC 1173 (KLR) (6 February 2024) (Judgement) also reached the same conclusion as in the Philip Mueke Maingi & Others supra that minimum and/or mandatory sentences are unconstitutional fo fettering the court's 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 v. Republic* (2018) eKLR.

5. The Supreme Court in the famous Muruatetu 2 decision has, however, clarified that its earlier judgement in the Muruatetu 1 Case 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 v. Joshua Gichuki Mwangi & Others*) 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.
6. The upshot is that the application is dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 25TH DAY OF FEBRUARY 2025 IN THE PRESENCE OF:

The Prosecution Counsel, Ms Sang

The Applicant, present

The Court Assistant, Jeniffer

J. M. NANG'EA, JUDGE.

