



**Nzioka v Republic (Criminal Miscellaneous Application  
E014 of 2025) [2025] KEHC 5154 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CRIMINAL MISCELLANEOUS APPLICATION E014 OF 2025**

**CW MEOLI, J**

**APRIL 30, 2025**

**BETWEEN**

**DAVID NZIOKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, David Nzioka, by his application dated 17/03/2025 seeks the revision of his sentence as meted out in Loitokitok RM's Court S.O No: 9 of 2019, and substituted subsequently, on appeal with 30 years imprisonment by the High Court in HCCRA No. 68 of 2019. The court has called for and perused the file in the latter case.
2. By its judgment delivered on 23<sup>rd</sup> August 2021, the High Court (Mwita J) dismissed the appeal on conviction while setting aside the life sentence and substituting therefor 30 years imprisonment from 10<sup>th</sup> April 2019 when the applicant was arrested.
3. This sentence, the Applicant now claims, amounts to "inhuman or degrading treatment or punishment for going beyond the normal life span on human being",. At the same time asserting his current age to be 51 years and invoking Articles 25(a) and 29(f) of *the Constitution*. Clearly, the Applicant is asserting that the substituted sentence is unconstitutional.
4. I have perused the grounds of appeal in Kajiado HCCRA 68 of 2019. Nowhere did the applicant cite the said grounds but the court, applying the rationale in Francis Kavioko Muruatetu and Others v Republic SC Petition No. 15 of 2015 [2017] eKLR and Christopher Ochieng Republic [2018] eKLR among others, substituted the mandatory life sentence for the offence of Defilement contrary to Section 8(1) and (2) of the *Sexual Offences Act* with the imprisonment term of 30 years.
5. This court lacks the jurisdiction to revisit the matter of the sentence as sought in the revision application, for the key reason that the Supreme Court has recently pronounced itself in Republic v



Mwangi and Others Petition No: E018 OF 2023 [2024] KESC 34 (KLR) as follows, with regard to sentences meted out under Section 8 of the *Sexual Offences Act*:

“In any case, the sentence imposed by the trial court was lawful and remains lawful as long as Section 8 of the *Sexual Offences Act* remains valid. We reiterate that the Court of Appeal had no jurisdiction to interfere with the sentence.”

6. Further, in Republic v Evans Nyamari Ayako Petition No: E002 of 2024 the Supreme Court in its judgment delivered on 11<sup>th</sup> April 2024 stated that:

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“(51) In the instant case, the Court of Appeal in its judgment, referred to the case of Manyeso Republic case where a different bench of the Court of Appeal cited the Muruatetu I case in stating that the rationale therein applied mutatis mutandis to the issue of mandatory indeterminate life sentence.

In Muruatetu II Case we reiterated that the rationale in the Muruatetu I Case was only applicable to the mandatory death penalty for the offence of murder under Section 203 as read with 204 of the *Penal Code*. Further, we disabused the notion that the rationale could be applied as is to other offences with a mandatory or minimum sentence.”

7. The corollary reason is that this court lacks the jurisdiction to revisit a decision made by another Judge of the High Court as herein invited by the Applicant to do. In the circumstances, this court is bereft of jurisdiction to entertain the Applicant’s motion dated 17<sup>th</sup> March 2025 and the same is hereby struck out.
8. This decision/order to be uploaded on the Case Tracking System (CTS) and a copy placed in Kajiado HCCRA No. 68 of 2019 and in Loitokitok S.O No: 9 of 2019.

**DATED, SIGNED AND DELIVERED AT KAJIADO THIS 30<sup>TH</sup> DAY OF APRIL 2025**

**C. MEOLI**

**JUDGE**

