



**Musyoka v Republic (Criminal Revision E015 of 2025)
[2025] KEHC 11654 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E015 OF 2025**

EN MAINA, J

JULY 31, 2025

BETWEEN

PETER NTHUSI MUSYOKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This ruling relates to the Applicant's Notice of Motion brought under section 333 (2) of the *Criminal Procedure Code* in which he seeks to have his sentence revised and he be given a non-custodial sentence for the remainder of the time of the sentence as enshrined in the *Probation of Offenders Act*.
2. The Applicant contends that he was charged with the offence of defilement contrary to Section 8(1) (2) of the *Sexual Offences Act* and sentenced to life imprisonment. He depones that he appealed to the High Court in Machakos vide Criminal Appeal No. 328 of 2013 but the appeal was dismissed. He then appealed to the Court of Appeal in Nairobi but again the appeal was dismissed and the conviction and sentence were re-affirmed.
3. He then filed a Petition No. E007 of 2020 for review of sentence and this time the High Court substituted the sentence of life imprisonment with imprisonment for twenty five (25) years to commence from the date of conviction, that is, 21st September 2013. He however avers that the sentence did not take into account that he was in custody from 16th November 2012 when he was arrested.
4. The Respondent opposed the application by way of Grounds of opposition.

Determination

5. This court has carefully considered the law application, the grounds of opposition and the law. It is not disputed that the Applicant was convicted and sentenced to life imprisonment for defilement of a seven



year old girl and that the judgment of the trial court was upheld by the High Court and the Court of Appeal. It is also not in dispute that the Applicant filed a petition before this court and more specifically on the sentence and on 14th February 2024, the court reduced the sentence from life imprisonment to twenty five years imprisonment.

6. In the Petition No. E007 of 2020, to wit Musyoka v Republic [2024] KEHC 1434 (KLR), Justice Rayola in his concluding remarks stated as follows;

“The petitioner prayed for remorse and submitted that he had learnt from his incarceration and was remorseful for the harm occasioned to the victim. He was of the opinion that the time served was adequate and he should be allowed to reintegrate back into the community as he had suffered adequate punishment for the offence committed.

20. Having considered all the above factors I do find that it is unlawful to jail the petitioner to an indeterminate period of time as that runs contrary to Article 50(2), (q) of *the Constitution* and Article 27, (1) &(2) and 28 of *the constitution* of Kenya 2010.

21. In the circumstances of this case I do exercise my discretion and set aside the life sentence imposed on the Appellant vide the Judgment of by Senior Resident Magistrate (Hon M.A.O. Opanga) In Kithimani Principal Magistrate court SO Case No 37 of 2012, and substitute the same with a sentence of twenty five years (25) which will run from 12th September 2013, when the initial conviction and sentence was effected.”

7. The court that heard that petition and reviewed the sentence is one of concurrent jurisdiction as this court. The Applicant’s sentence having been reviewed by three courts including the Court of Appeal, this court has no jurisdiction to revisit it.

8. This application is not merited and it is dismissed.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 31ST DAY OF JULY 2025.

E.N. MAINA

JUDGE

In the presence of:

Ms Nyauncho for the state

Applicant (virtually at Machakos Main prison)

Miriam – Court Assistant/Interpreter

