



**Maanza v Director of Public Prosecutions (Petition E080 of 2023)  
[2024] KEHC 694 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 694 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION E080 OF 2023**

**EM MURIITHI, J**

**JANUARY 31, 2024**

**IN THE MATTER OF ARTICLES 2(4), 10(2)(B), 19, 22(1), 23(1)(3)(D)(F), 25  
(C), 27(1), 28, 29(F), 50(1)(2) AND 165(3)(D)(I)(II) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF INTERPRETATION OF THE MINIMUM - MAXIMUM MANDATORY  
PROVISIONS UNDER THE SEXUAL OFFENCES ACT NO. 3 OF 2006 AND IN THE  
MATTER OF SECTION 216 AND 329 OF THE CRIMINAL PROCEDURE CODE**

**AND**

**IN THE MATTER OF KENYA JUDICIARY SENTENCING POLICY GUIDELINES**

**BETWEEN**

**SAMSON MAANZA ..... PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**JUDGMENT**

1. The petitioner herein filed a petition dated 4/7/2022 seeking:
  1. A declaration be made under the provisions of Article 27, 23(3)(d) of *the Constitution* that Section 8(2) of the *Sexual Offences Act* are unconstitutional to the extent that they provide for the mandatory life imprisonment sentence to accused persons convicted of Defilement which infringes the inherent right of every accused person to a fair trial as envisaged under Article 25(c) of *the Constitution*.
  2. This honorable court be pleased to issue a declaration that the minimum – maximum sentencing provisions under the *Sexual Offences Act* are unconstitutional in so far as they infringe on the inherent right of every accused person to have his/her mitigating factors



considered as envisaged under Article 50 (2) of *the Constitution* as read with Section 216 and Section 329 of the Criminal Procedure Code.

3. A declaration be made subject to prayer no. 1, 2 and 3 that I the petitioner herein be remitted back to his respective trial for rehearing on sentence only so that his mitigating factors can be considered and appropriate sentence awarded.”
2. The petitioner in his affidavit in support of the petition avers that he was arrested on 14/1/2015 and charged with defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* vide Githongo Cr. Case No. 51 of 2015. After his conviction and subsequent sentence to life imprisonment, he lodged Meru High Court Criminal Appeal No. 97 of 2015 which was dismissed and the sentence upheld. He now seeks to challenge the constitutionality of section 8(2) of the *Sexual Offences Act*, in view of the Supreme Court’s directive in *Muruatetu* decision. According to him, the mandatory sentence of imprisonment for life provided under section 8(2) of the *Sexual Offences Act* fails to conform with the tenets of fair trial that accrue to accused persons under Article 25(c) of *the Constitution*. The said section deprives the court the use of judicial discretion in matters concerning the life of an individual. The trial court’s failure to take into consideration his mitigating factors and appropriate sentence is against his right to equal protection and equal benefit of the law under Article 27(1) of *the Constitution*.
3. It was urged that this court has judicial powers under Articles 23(1) and 165(d)(i)(ii) of *the Constitution* to hear and determine application for redress of a denial, violation, infringement of, or threat to a right or fundamental freedom and to hear and determine a question whether any law is inconsistent with or in contravention of *the constitution*.
4. Directions were taken that the petition be heard by way of written submissions which were duly filed on 18/7/2023 and 21/9/2023 respectively.
5. The petitioner urged that the minimum – maximum sentences deprive court the discretion to impose alternative sentence and orders, and they offend the constitutional dictate of fair trial and the benefit of equal treatment in law. He urged that the mandatory life imprisonment robbed him an opportunity for an individualized sentence that would have taken into consideration his personal information, mitigation and the circumstances surrounding the offence committed, thus infringing his right under Articles 25(c), 27(1), 28 and 50(2)(p) of *the Constitution*. He relied on *Francis Karioko Muruatetu & Another v Republic* [2017]eKLR, *Maingi & 5 others v Director of Public Prosecutions & another* (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment), *Francis Musyoka Nzau v Republic* Petition N. E027/2022 at Meru High Court, *Hassan Mutwiri v Republic* (Petition No. E015 of 2022 [2022] KEHC 15772 (KLR) and *Julius Kiunga Mbirithia v Republic* Cr. Petition No. E027/2023 at Meru High Court in support of his submissions.
6. The respondent urged that *Muruatetu* 1 decision did not invalidate minimum mandatory sentences in the *Sexual Offences Act*. It urged that sexual violence victims also enjoy their rights to equality and non-discrimination, dignity and have effective remedy to continue to live with the aftermath of the violations. It urged that the mandatory minimum sentences in the *Sexual Offences Act* adhere to the principles underpinning the sentencing process as set out in the Sentencing Policy Guidelines.
7. The DPP urged that in as much as Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* imposes a life imprisonment to the perpetrators, the same achieves the uniformity principle that all accused persons charged under the said section are given the same sentence without discrimination.



## Determination

8. The trial court's judgment and the proceedings therefrom were not been availed to guide this court in its determination whether the petitioner's mitigation was considered. However, the High Court's judgment on appeal is attached and it is shown that the Court (Kiarie Waweru Kiarie, J.) dismissed the appeal finding that "the appellant was therefore sentenced to the only available legal sentence." Of course, the imposition of a lawful legal sentence of imprisonment for life on the applicant cannot be deemed to be a violation of his rights. The only question to be resolved as sought in this petition is, therefore, whether the sentence of imprisonment for life is constitutional.
9. As regards the validity of sentence of imprisonment for life, this court has in [Hesbon Kiruja Mureithi v R](#), Meru HC Cri. Pet. No. E009 of 2022 decided following Court of Appeal decisions therein discussed that in its indeterminate nature, the sentence of life imprisonment is unconstitutional and it must, therefore, be clarified in terms of a jail term for a number of years, and following the guidance of Kisumu Court of Appeal Criminal Appeal No. 22 of 2018 [Evans Nyamari Ayako V. R.](#), respectfully agreed that the life sentence may be equated with an imprisonment for thirty years.

## Orders

10. Accordingly, for the reasons set out above, the sentence of imprisonment for life is set aside and substituted with a sentence of imprisonment for thirty (30) years commencing, pursuant to section 333 (2) of the [Criminal Procedure Code](#), from the date of sentence in the case, or where directions were given in the trial court for commencement on any other date, from that other date.

Order accordingly.

**DATED AND DELIVERED THIS 31ST DAY OF JANUARY, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

**Petitioner/Appellant/Applicant in person.**

**Mr. Masila, Principal Prosecution Counsel for the DPP.**

