



**Kamathi v Republic (Miscellaneous Criminal Application  
E113 of 2023) [2024] KEHC 527 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E113 OF 2023**

**A. ONG'INJO, J  
JANUARY 25, 2024**

**BETWEEN**

**HASSAN NDUNG'U KAMATHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Hassan Ndung'u Kamathi was charged in Mombasa Chief Magistrate's Court Criminal Case No. 485 of 2013 with the offence of defilement contrary to Section 8 (1) as read with 8 (2) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The applicant was convicted and sentenced to serve life imprisonment as shown in committal warrant dated 27.6.2014. He preferred an appeal against the conviction and sentence *vide* Criminal Appeal No. 135 of 2014 at Mombasa High Court but the trial court file was not traced up to the time that he withdrew the appeal on 10.6.2023 and opted to file an application for resentencing.
3. In his application for resentencing, the applicant sought that this court considers his mitigation and also applies the holding in Const. Pet. No. E017 of 2021, [Phillip Mueke Mainigi & Other v Republic](#) and [Francis Karioko Muruatetu v Republic](#) (2017) eKLR.
4. To consider the applicant's application, this court called for a Sentence Review Report which was filled on 16.11.2023 showing that the applicant who was 39 years of age had served 9 years and 7 months in prison. It is also indicated that he was in remand custody for a period of one year before he was convicted and sentenced.
5. The Sentence Review Report indicate that the applicant's friend, mother and village elder spoke well of him and proposed that his sentence be reviewed as they were ready to reintegrate him back to the community.



6. In consideration that life imprisonment has now been declared unconstitutional in the case of *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment),

“... Nevertheless, the reasoning in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR equally applied to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denied a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences were allowed to be heard in mitigation. That was an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of the *Constitution*.

An indeterminate life sentence was inhumane treatment and violated the right to dignity under article 28 of the *Constitution*. An indeterminate life sentence without any prospect of release or a possibility of review was degrading and inhuman punishment. It was a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation was achieved.

The Court of Appeal had the discretion to interfere with a life sentence. The appellant raised the concern about his sentence of life imprisonment while he was 18 years of age in his first appeal. The appellant did not say anything in mitigation after conviction by the trial court, which he attributed to his young age at the time. The appellant was convicted for defiling a child of 4 years and for the likely ramifications of his actions on the child’s future. While the appellant should be given the opportunity for rehabilitation, he also merited a deterrent sentence.”

7. In consideration of the above decision, this court hereby sets aside the life sentence passed against the applicant in the trial court and substitutes thereof imprisonment for a period of 25 years from the date of his arraignment in court. The applicant shall serve 3 years in prison and the remainder of 3 years to be served under probation supervision on condition that he becomes an ambassador against sexual and gender based violence in his home area and attend a Chief/Assistant Chief’s baraza and/or mosque/church once in a month and talk to members of the public within his home area about the negative effects of sexual and gender based violence to the community in general. The probation officer in charge of his supervision to file a report to that effect at the conclusion of such supervision.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS 25<sup>TH</sup> DAY OF JANUARY 2024**

**HON. LADY JUSTICE A. ONG’INJO**

**JUDGE**

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

**HON. LADY JUSTICE A. ONG’INJO**

**JUDGE**

