



**Linda v Republic (Miscellaneous Criminal Application  
E115 of 2023) [2024] KEHC 526 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 526 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E115 OF 2023**

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

**BETWEEN**

**DAUDI AURA LINDA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Application**

1. The applicant Daudi Aura Linda was arraigned in court on 18.12.2011 and charged in Mombasa Chief Magistrate's Court Criminal Case No. 203 of 2011 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 on 20.9.2012. His appeal in Criminal Appeal No. 69 of 2016 at Mombasa High Court was withdrawn by a letter dated 10.7.2023 as the lower court file was not traced and upon withdrawal of the appeal, the applicant filed an application seeking that life imprisonment be reviewed as he had been in custody since 20.9.2012 and that the court should apply the decision in Petition No. 97 of 2021, *Edwin Wachira & Others v Republic* to this case where Mativo, J. as he then was declared mandatory sentences for sexual offenders as unconstitutional. He also relied on Petition E017 of 2021, *Philip Mueke Maingi & Others v DPP* to support his application for resentencing.
3. To consider the applicant's application, this court called for a Sentence Review Report which was filed on 22.11.2023 showing that the applicant who is currently 34 years of age and had served 11 years in prison and had been sentenced on 20.9.2012.



4. 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.”

5. 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 on 18.12.2011.

6. That would mean that he has a balance of 4 years to serve. The applicant therefore has a balance of 4 years imprisonment which shall be served as follows: -

1 year in prison custody 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 the Assistant Chief’s baraza at Diskdera Sub Location at least 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**

