



**Mambo v Republic (Miscellaneous Criminal Application
E107 of 2023) [2024] KEHC 529 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E107 OF 2023**

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

BETWEEN

SAFARI MAMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Application

1. The applicant Safari Mambo was arraigned in court on 28.1.2013 and charged in Mombasa Chief Magistrate's Court Criminal Case No. 262 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 on 1.8.2014. His appeal in Criminal Appeal No. 21 of 2019 at Mombasa High Court was never heard as the trial court file was not traced up to the time that he withdrew the appeal on 12.7.2023 and filed this 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 Maingi & others v Republic*, *Francis Karioko Muruatetu v Republic* [2017] eKLR Petition No. 97 of 2021, *Edwin Wachira & others v Republic*.
4. To consider the applicant's application, this court called for a Sentence Review Report which was filed on 23.11.2023 showing that the applicant who is currently 36 years of age and had served 12 years in prison and had been remanded from 28.1.2012 up to 1.8.2014 when he was sentenced.
5. The Chief of Rabai was interviewed and she was positive that the applicant should be considered for non-custodial sentence to enable him take care of his mother and have a family. It was also indicated



that the applicant had undergone behavioural modification and rehabilitation and that he managed to complete his Form 4 education and attained a C- in KCSE and attained a Diploma in Theology and he is also a paralegal and a teacher.

6. The Sentence Review Report recommends that he is considered for non-custodial sentence.
7. 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.”

8. 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. That would mean that he has a balance of 4 years to serve. The applicant shall serve 1 year 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 Chief/Assistant Chief’s baraza and/or church/mosques 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 25th 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

