



REPUBLIC OF KENYA



**M’Ampuria v Director of Public Prosecutions (Petition E009 of 2024)
[2024] KEHC 7086 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 7086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E009 OF 2024
TW CHERERE, J
MARCH 20, 2024**

BETWEEN

FRANCIS M’AMPURIA PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

JUDGMENT

1. Petitioner was convicted on his own plea of guilt to the offence of defilement contrary to section 8(1) as read with section 8 (2) of the *Sexual Offences Act* and was sentenced to life imprisonment.
2. Petitioners’ appeal to the High Court vide Meru Criminal Appeal No. 3 of 2017 was dismissed on 05th July, 2018.
3. Petitioner seeks resentence on the grounds among others that he is 82 years old and has reformed.
4. Ms. Rita, learned counsel for the DPP opposed the Petition on the grounds that the offence was committed against an 8-year-old child who was traumatised and Applicant who is old enough to be her grandfather ought to be incarcerated long enough to pay for his crime. She proposed an imprisonment term of 30 years.
5. The extent that the *Sexual Offences Act* prescribe minimum mandatory sentences with no discretion to the trial court to determine the appropriate sentence to impose, falls foul of Article 28 of *the Constitution* which provides that “Every person has inherent dignity and the right to have that dignity respected and protected”. (See *Maingi & 5 others v Director of Public Prosecutions & another (Petition E017 of 2021)* [2022] KEHC 13118 (KLR)).
6. When he appeared virtually before this court, I noticed that he had difficulty walking and had to be assisted by another inmate. He similarly could not comprehensively express himself.



7. Petitioner has been in continuous incarceration since January, 2016 which is a period of 8 years and 5 months from the date of his arrest.
8. Petitioner filed a medical report dated 07th February, 2024 which reveals that he is partially blind and suffers from urine inconsistency and dementia.
9. When he appeared virtually before this court, I noticed that he had difficulty walking and had to be assisted by another inmate. He is therefore no doubt a liability to the prison authorities. I also noticed that Petitioner could not comprehensively express himself.
10. Flowing from the foregoing, I find that it would not serve any meaningful purpose to confine Petitioners to a life of hopelessness.
11. The term of life imprisonment imposed on the Petitioner is revised and commuted to the period already served.

DELIVERED AT MERU THIS 20TH DAY OF MARCH 2024

WAMAE. T. W. CHERERE

JUDGE

Attendances

Court Assistants - Kinoti/ Munene

Petitioner - Present in person

For the DPP - Ms. Rita (PC-1)

