



**Martin v Republic (Criminal Miscellaneous Application
136 of 2019) [2024] KEHC 4109 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION 136 OF 2019**

PN GICHOHI, J

APRIL 30, 2024

BETWEEN

JULIUS KIPRUTO MARTIN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. When the applicant herein appeared for plea before Hon. H.O Barasa SRM on 20/05/2011 in Nakuru Chief Magistrate's Court A/CR Case No. 88 of 2011, he pleaded guilty to the charge of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offence Act*. He was convicted on his own plea and sentenced to serve life imprisonment.
2. Aggrieved, he preferred an appeal vide Nakuru High Court Criminal Appeal No. 25 of 2015. His grievance was on conviction and sentence. He urged the Court to quash the conviction for being equivocal. He termed the sentence as excessively harsh.
3. After the hearing of the appeal, Prof. J. Ngugi J (as he then was) rendered his judgment on 21/06/2018 dismissing the appeal for lack of merit and upholding both the conviction and sentence.
4. Aggrieved, the Applicant moved to the Court of Appeal in Criminal Appeal No. 52 of 2018 and after hearing both parties, the Court marked the Appeal as withdrawn and therefore dismissed under rule 68 (1) of the *Court of Appeal Rules*.
5. He has now come before this Court *vide* an undated notice of motion seeking re-sentence and review of the sentence herein.
6. While citing *Francis Karioko Muruatetu v Republic* (Supreme Court Petition No. 15 of 2015), the Applicant termed the mandatory life imprisonment as excessive and harsh. He therefore urged the Court to grant him an appropriate sentence.



7. By a replying affidavit sworn on 05/03/2024 by James Kihara, the learned Counsel for the State, the Respondent has no objection to reviewing of the life imprisonment . He however urges the Court to consider giving a deterrent sentence.
8. Further, he urges the Court to consider as part of the sentence, the time the Applicant has spent in custody prior to conviction under section 333 (2) of the *Criminal Procedure Code*.

Determination

9. This Court has heard the parties. There is no doubt that the child defiled by the applicant was aged 10 years and that he was treated as a first offender. While sentencing the applicant to life imprisonment, the trial court considered the nature of the offence and the circumstances it was committed.
10. While dealing with the appeal on sentence, the learned Judge had this to say :-

“On sentence, Mr. Chigiti submitted that the sentence meted out was the minimum so there was no room for the court to give a lesser sentence.”
11. The Court therefore held:-

“Turning to the sentence, Mr. Chigiti is right that once a conviction is entered under section 8 (2) of the *Sexual Offences Act* (where the victim is less than eleven years old) , the only possible sentence is life imprisonment . That was the sentence imposed on the Appellant . His appeal against sentence is, therefore , equally without merit.”
12. Definitely, the High Court relied on the mandatory sentence on 21/06/2018 while upholding the life imprisonment meted by the trial Court.
13. Regarding such mandatory sentence, this Court is alive to the decision in *Dismas Wafula Kilwake v Republic* [2019] eKLR where while referring to the Supreme Court decision *Francis Karioko Muruatetu v Republic* (Supreme Court Petition No. 15 of 2015) on mandatory sentence , the Court of Appeal held:-

“In principle, we are persuaded that there is no rational reason why the reasoning of the Supreme Court, which holds that the mandatory death sentence is unconstitutional for depriving the courts discretion to impose an appropriate sentence depending on the circumstances of each case, should not apply to the provisions of the *Sexual Offences Act*, which do exactly the same thing.”
13. This Court considers the victim’s tender age when the Applicant defiled her . He did admit that offence in a plea that was unequivocal. The Court also notes his remorse in that during mitigation, he had sought forgiveness.
14. Nevertheless, and in the circumstances herein, a custodial but determinate and deterrent sentence is the most appropriate.
15. The Applicant is therefore re- sentenced to serve 25 years imprisonment. The time spent in custody from the date of arrest to the time he was convicted and sentence should be taken into account in compliance with Section 333 (2) of the Criminal Procedure Code.
16. In conclusion, the court makes the following orders:-



1. The life sentence is therefore substituted with a sentence of twenty-five (25) years imprisonment.
2. In computing that sentence, the period the applicant spent in custody, that is from the date of arrest being 27/05/2011 to 06/06/2011 when he was convicted and sentenced, shall be taken into account.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF APRIL , 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Julius Kipruto Martin - Applicant

Mr. Kihara for Respondent

Ruto - Court Assistant

