



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mazera v Republic (Criminal Petition E057 of 2023)  
[2024] KEHC 4857 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4857 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL PETITION E057 OF 2023**

**A. ONG'INJO, J**

**APRIL 25, 2024**

**IN THE MATTER OF ARTICLE 22(1), 23(1), 25(C), 27, 28, 50(2)(P)  
(Q), 159(2), 160(1) AND 165 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF EDWIN WACHIRA & 9 OTHERS V REPUBLIC PETITION  
NO. 97 OF 2021 CONSOLIDATED WITH PETITION NO. 88 OF 2021, PETITION  
NO. 98 OF 2021 AND PETITION NO. 57 OF 2021 AT MOMBASA HIGH COURT**

**AND**

**IN THE MATTER OF PHILLIP MUEKE MAINGI & 5 OTHERS V  
DIRECTOR OF PUBLIC PROSECUTIONS & ATTORNEY GENERAL,  
PETITION NO. E017 OF 2021 AT MACHAKOS HIGH COURT**

**AND**

**IN THE MATTER OF SECTION 216, 329 AND  
333(2) OF THE CRIMINAL PROCEDURE CODE**

**BETWEEN**

**SAMUEL MAZERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Application**

1. The applicant Samuel Mazera was charged in Mombasa Chief Magistrate's Court Criminal Case No. 2512 of 2013 with the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the [Sexual Offences Act](#) No. 3 of 2006.



2. The particulars of the offence were that on September 27, 2013 at [particulars withheld] in District (*sic*) of Mombasa County intentionally caused his penis to penetrate the vagina of E M a child aged 7 years.
3. The trial court found that the prosecution had proved beyond reasonable doubt that the applicant guilty of the offence of defilement, convicted him and sentenced him to serve life imprisonment.
4. The applicant being dissatisfied with the conviction and sentence appealed in the High Court of Kenya at Mombasa Criminal Appeal No. 123 of 2014 where the appeal was dismissed and the conviction and sentence affirmed.
5. *Vide* Chamber Summons Application herein together with the Supporting Affidavit sworn by the Applicant, he now seeks for review of the life imprisonment sentence and that the court grants him a lenient sentence informed by his mitigation and unique circumstances of his case pursuant to Article 50(2)(p)(q) of the Constitution.
6. The applicant also relied on Petition No. 97 of 2021, Edwin Wachira & 9 Others v Republic as consolidated with Petition No. 88 of 2021 and 57 of 2021 at Mombasa High Court where the court declared the application of minimum mandatory sentences as being unconstitutional and granted orders that those affected may petition the High Court for resentencing.
7. The applicant contended that the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the provisions of Section 333(2) of the Criminal Procedure Code. The applicant cited the case of Jona & 87 Others v Kenya Prison Services & 2 Others, Petition No. 15 of 2020.
8. Upon conviction of the Applicant on 26.5.2014, he told the court that he was an orphan and prayed for leniency. The Trial Magistrate considered his mitigation, the gravity of the offence and the fact that the Applicant was an adult at the time of commission of the offence and sentenced him to life imprisonment. The Applicant's mitigation was therefore considered before sentence was passed.
9. However, in consideration of the emerging jurisprudence and preference for determinate sentences, and in consideration of the holding in the Court of Appeal case of Manyeso v Republic (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment), where it was stated: -

“We note that the decisions of this court relied on by the appellant, namely *Evans Wanjala Wanyonyi v Rep* [2019] eKLR and *Jared Koita Injiri v Republic* Kisumu Crim App No 93 of 2014 were decided before the Supreme Court clarified the application of its decision in *Francis Karioko Muruatetu & another v Republic* [2021] eKLR and limited its finding of unconstitutionality of mandatory sentences to mandatory death sentences imposed on murder convicts pursuant to section 204 of the Penal Code. This fact notwithstanding, we are of the view that the reasoning in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of the Constitution. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application Nos 66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now



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 is achieved.”

10. This court sets aside the life imprisonment and substitutes thereof 30 years imprisonment to run from October 18, 2013 when the Applicant was first arraigned in court pursuant to Section 333(2) of the *Criminal Procedure Code*.

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

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

In the presence of:

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

