



**Luhanya v Republic (Miscellaneous Criminal Application
E101 of 2023) [2024] KEHC 6293 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E101 OF 2023**

A. ONG'INJO, J

MAY 30, 2024

BETWEEN

KENNEDY ASERI LUHENYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Kennedy Aseri Luhanya was charged and convicted for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code, defilement contrary to Section 8 (1) as read with Section 8 (3) of the Sexual Offences Act No. 3 of 2006 and being in possession of ammunition without a firearm certificate contrary to Section 4(1)(a) as read with Section 4 (3) of the Firearms Act Cap 114 Laws of Kenya.
2. The Applicant was sentenced to death for the 1st count, 10 years for the 2nd Count and 5 years for the 3rd count. The sentences were to run concurrently which were later commuted to life imprisonment.
3. The Applicant filed appeals in Mombasa H. C. Cr. A. No. 66 of 2017 which was withdrawn vide oral application in court on 28th January 2019 before Lady Justice Njoki Mwangi because of Mombasa H. C. Cr. A. No. 106 of 2014 which was also withdrawn *vide* letter dated 12th July 2023 to pursue the application herein for review of his sentence.
4. The applicant now seeks that this court factors the remand period in his sentence and considers his mitigation as follows: -
 - a. That he did not have any criminal records at the point of sentencing.
 - b. That he was aged 40 years at the time he committed the offence and showed remorse ahead of his sentence by the trial court.



- c. That he has been in the prison facility for a period of over 12 years with considerably good reputation.
5. The Sentence Review Report by Abeid Mohamed Abeid - Senior Probation Officer dated 21st November 2023 and filed on 22nd November 2023 was to the effect that the applicant hails from Vihiga County and he relocated to Mombasa after being employed as a broker of goods in Kongowea. That he is suffering from terminal illness which he is currently taking medication for. The Applicant pleaded for leniency from the court saying he had learnt his lesson for the period he had been incarcerated. That his family and community are ready to accommodate him within Mombasa. It was recommended that the court considers reviewing his sentence and placing him on probation under supervision.
6. In consideration of the Sentence Review Report, this court hereby sets aside the life imprisonment which has been declared unconstitutional in the Court of Appeal case of *Julius Kitsao Manyeso v Republic* (2020) eKLR where it was held that imposition of a mandatory indeterminate life sentence is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of the *Constitution*.
7. To that end, life imprisonment in Count I is substituted with 30 years imprisonment to take effect from 15th May 2011 pursuant to Section 333(2) of the *Criminal Procedure Code*. Upon completion of the sentence in Count I, sentences in Count II and III of 10 and 5 years respectively to run concurrently with last 3 years being served under supervision of probation officer to ensure that he does not fall back into crime.

Dated, signed and delivered in Open Court/online through MS TEAMS,

This 30th day of May 2024

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

Misc. Cr. App. E101.2023 Page 4 of 4 A. Ong'injo, J.

