



**Tonje v Republic (Miscellaneous Criminal Application
E106 of 2023) [2024] KEHC 6285 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E106 OF 2023**

A. ONG'INJO, J

MAY 30, 2024

BETWEEN

JOHN TONJE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant John Tonje was charged and convicted for the offence of robbery with violence in Mombasa CMC Cr. C. No 435 of 2012 then sentenced to life imprisonment. Hearing of the applicant's appeal in Mombasa H. C. Cr. A. No 133 of 2014 did not proceed because the lower court file could not be traced.
2. The applicant withdrew the appeal in Mombasa H. C. Cr. A. No 133 of 2014 to pursue the application herein for review of his sentence.
3. The applicant now seeks that this court factors the remand period in his sentence and considers his mitigation as follows: -
 - a. That he was a first offender.
 - b. That he was aged 37 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 11 years with considerably good reputation.
4. The Sentence Review Report by Lydia Ngigi, Senior Probation Officer, Mombasa dated 22nd November 2023 and filed on the same day was to the effect that the applicant has three children in need of his care and protection after their mother passed on and left them in the care of their grandmother who is needy and aged. That the community and family are ready to reintegrate him, that he has



a permanent residence and able to continue with his driving job. It is recommended that the court considers reviewing his sentence to a lenient one including consideration for a non-custodial sentence for the best interest of the children.

5. In considered 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*.
6. To that end, life imprisonment is substituted with 30 years imprisonment with effect from 6th January 2012 pursuant to Section 333(2) of the *Criminal Procedure Code*. The last 3 years of the sentence to be served on probation under supervision to ensure he does not relapse 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

