



THE SUPREME COURT OF KENYA
REPUBLIC Vs. EVANS NYAMARI AYAKO
SC PETITION NO. E002 OF 2024
DATE OF JUDGMENT: 11TH APRIL, 2025
MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court allows the appeal.

Background

Evans Nyamari Ayako (the Respondent) was charged in *Criminal Case No. 721 of 2011 in the Senior Principal Magistrates' Court at Ogembo* with the offence of defilement of a minor aged 6 years, and in the alternative, committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act. The Trial Court found him guilty of defilement and sentenced him to serve life imprisonment in line with the provisions of the Sexual Offences Act. On the first appeal, the High Court (*Okwany, J.*) sustained both the conviction and the sentence.

The respondent lodged a second appeal before the Court of Appeal challenging the High Court's decision on the sentence. The Court of Appeal (*H.M. Okwengu, H.A. Omondi and J.M. Ngugi, JJ.A*) allowed the appeal in part, holding that the maximum sentence was justified given the circumstances of the case, that is, the minor's age, the respondent threatened her, caused extensive harm on her genitalia and the respondent's lack of remorse. However, applying the rationale in ***Murutatetu & Another Vs Republic; Katiba Institute & 4 Others (Amicus Curiae)*** (Petition Nos. 15 & 16 of 2015) [2021] KESC 31 (KLR) (***Murutatetu II***), the Court of Appeal held that a mandatory sentence violates the Constitution because a convicted person is not heard on mitigation and it violates a convicted person's right to dignity. In addition, the Court of Appeal held that life imprisonment is cruel and degrading punishment and goes against the evolving standards of human decency and human rights, and held that life imprisonment does not equate to the natural life of the convict but that it translates it to thirty (30) years' imprisonment. The sentence was therefore reduced and the respondent was sentenced to serve 30 years from 18th July 2011.

The Republic (the Appellant) filed an appeal before the Supreme Court and upon consideration, the Supreme Court allowed the appeal for the following reasons:

1. *On whether the Court of Appeal acted ultra vires in substituting life imprisonment with 30 years and whether it usurped the powers of Parliament*, the Court of Appeal lacked jurisdiction to determine the constitutionality of life imprisonment since it was not an issue that was placed before the High Court, at the first instance, for determination. In addition, by ascribing a term

sentence of 30 years to be the equivalent to life imprisonment, the Court of Appeal usurped the powers of the Legislature and went outside its mandate and powers.

2. *On whether in applying the **Muruatetu II Case**, the Court of Appeal violated the doctrine of stare decisis*, the **Muruatetu II Case** reiterated that the **Muruatetu & Another Vs Republic; Katiba Institute & 5 Others (Amicus Curiae)** (Petition Nos. 15 & 16 of 2015) (Consolidated)) [2017] KESC 2 (KLR) (**Muruatetu I Case**) applied only to the mandatory death penalty for the offence of murder under Section 203 as read together with Section 204 of the Penal Code, Cap 63 of the Laws of Kenya. Therefore, the Court of Appeal violated *stare decisis* by applying the **Muruatetu I Case** to mandatory sentences under the Sexual Offences Act.

Accordingly, the Court issued the following orders:

- a) *The Appeal dated 1st February, 2024 is allowed.*
- b) *The Judgment of the Court of Appeal in **Evans Nyamari Ayako vs Republic Criminal Appeal No. 22 of 2018** delivered on 8th December 2023 is hereby set aside to the extent that it commutes life imprisonment to thirty (30) years and converted the respondent's sentence from life imprisonment to thirty (30) years.*
- c) *For the avoidance of doubt, the Respondent shall serve life imprisonment as sentenced by the Magistrate's Court.*
- d) *Parties shall bear their own costs.*

