



THE SUPREME COURT OF KENYA

REPUBLIC VS. JULIUS KITSAO

SC PETITION NO. E013 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.

Order: The Court allows the appeal.

Background

Julius Kitsao Manyeso (the Respondent) was charged in *Criminal Case No. 64 of 2013 Senior Principal Magistrates' Court at Malindi* with the offence of defilement of a girl aged 4 1/2 years old, contrary to Section 8 (2) of the Sexual Offences Act, CAP 63A of the Laws of Kenya. The Trial Court found the respondent guilty as charged and sentenced him to life imprisonment. The conviction and sentence were upheld on first appeal at the High Court (*Nyakundi R., J*).

On second appeal, the Court of Appeal agreed with the Trial and High Court's determination on conviction but reversed the decision on sentence. However, in its determination, that court applied the Supreme Court's decision in ***Muruatetu & Another Vs. Republic; Katiba Institute & 5 others (Amicus Curiae)*** S.C. Petition No. 15 & 16 of 2015 (Consolidated) [2017] KESC 2 (KLR) (***Muruatetu I***) holding that it applied to the imposition of a mandatory indeterminate life sentence as such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed such mitigation. This, the Court of Appeal held, was an unjustifiable discrimination, unfair and contrary to the principle of equality before the law and that an indeterminate life sentence was inhumane treatment and violated the right to dignity under the Constitution. Based on this finding the Court of Appeal set aside the sentence of life imprisonment imposed and substituted it with a sentence of 40 years from the date of his conviction.

The Republic (the Appellant) filed an appeal at the Supreme Court, which delineated the following issues for its determination:

1. *Whether the Supreme Court has Jurisdiction to hear the matter:* the Court found it had jurisdiction in particular, on whether the Court of Appeal erred by entertaining a constitutional issue that had not been raised at the trial court and the High Court; whether the Court of Appeal misapplied this Court's decision and subsequent directions in *Muruatetu II* in finding the sentence of life imprisonment unconstitutional; and whether the Court of Appeal usurped the legislative powers of Parliament in substituting the sentence of life imprisonment with one of 40 years' imprisonment.

2. *Whether the Court of Appeal acted ultra vires and without jurisdiction by assuming original jurisdiction on a constitutional issue not raised at the Superior Court,* the Court found that by considering the constitutionality of the sentence of life imprisonment at the first instance, the Court of Appeal acted as

an original court instead of an appellate court. The Constitutional issue ought to have first been addressed by the High Court before the Court of Appeal could consider the same. Therefore, it acted *ultra vires* and without jurisdiction.

3. *Whether the Court of Appeal violated the principle of stare decisis by misapplying the decision in the Muruatetu I and II Cases and finding life imprisonment sentence to be unconstitutional*, the Court found that the *Muruatetu Cases* did not invalidate mandatory sentences or minimum sentences in the Penal Code CAP 63 of the Laws of Kenya, the Sexual Offences Act or any other statute. The *Muruatetu I Case* is also explicit that it is not for the court to define what constitutes a life sentence but for Parliament to enact legislation on what constitutes a life sentence. The Court of Appeal, therefore, violated the principle of *stare decisis* by misapplying the decision in the *Muruatetu Cases* and finding the sentence of life imprisonment to be unconstitutional.

4. *Whether the Court of Appeal erred in law by substituting the life imprisonment sentence with a 40-year sentence thereby usurping the legislative powers to define sentences*, the Court found that the Court of Appeal cannot extend its determination to rectifying or amending the statute in question, as this would contravene the doctrine of separation of powers, which delineates the functions of the judiciary, legislature, and executive. The Court of Appeal therefore erred in law by substituting the life imprisonment sentence with 40-year sentence.

Final Orders:

(a) The Petition of Appeal is allowed to the extent of setting aside the judgement of the Court of Appeal in Malindi in Criminal Appeal No. 12 of 2021 Julius Kitsao Manyeso versus Republic delivered on 7th July 2023.

(b) The life imprisonment sentence imposed by the Trial Court and affirmed by the High Court is hereby reinstated. The Respondent, Julius Kitsao Manyeso should therefore complete the life imprisonment sentence imposed by the Trial Court.

(c) There shall be no order as to costs.