



**Aloo v Republic (Criminal Petition 34 of 2023)
[2024] KEHC 15112 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION 34 OF 2023
RE ABURILI, J
NOVEMBER 22, 2024**

BETWEEN

EZEKIEL ONYANGO ALOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner Ezekiel Onyango Aloo is a convict in Siaya SPM SO 15/2019 where he was sentenced to serve life imprisonment upon conviction under Section 8 (2) of the *Sexual Offences Act*. The minor victim was aged 7 years old. The Petitioner appealed vide HCCRA 82/2019 which appeal against conviction was dismissed vide judgment rendered on 29/9/2020, which judgment reduced life imprisonment to 35 years imprisonment to run from the date of sentence in the lower court on 18/11/2019. This was in view of the Muruatetu I and Jared Injiri Koita V. R (2019) eKLR decision which this court adopted in reducing sentence.
2. Vide Misc. Cri. Application E127/2022, the same petitioner convict herein sought for sentence review which this court dismissed on account of the reduction of sentence on appeal as stated above. The court found the application for resentencing to be mischievous, frivolous and vexatious.
3. The convict is back with another petition herein dated 12/6/2023 seeking for sentence review under Section 333 (2) of the Criminal Procedure Code.
4. I have considered the application and in view of the sentence reduction in HCCRA 82/2019 which was clear on the commencement date, where the convict benefitted from the Muruatetuu case before it was clarified by the Supreme Court and now in view of the further clarification in Republic v Joshua Gichuki Mwangi [2024]e KLR that the mandatory sentences under the *Sexual Offences Act* are lawful and constitutional, it is clear that the convict was lucky to have had life imprisonment reduced to 35 years imprisonment and therefore there is no more residual discretion left to be exercised under Section



333 (2) of the Criminal Procedure Code. If the court were to acceded to what the convict is asking, it would take into account the period that he has served as part of the life imprisonment before reduction to 35 years imprisonment.

5. Accordingly, the petition dated 12/6/2023 is found to be misplaced. It is dismissed. This file is closed. Signal to issue.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

