



**Okuto alias Mohamed v Republic (Criminal Petition 33 of 2023)  
[2024] KEHC 15103 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15103 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL PETITION 33 OF 2023  
RE ABURILI, J  
NOVEMBER 22, 2024**

**BETWEEN**

**JOHN OTIENO OKUTO ALIAS MOHAMED ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Petitioner is John Otiemo Okuto alias Mohammed. He is a convict in Bondo SPM SO Case No. 35 /2018 where he was sentenced to serve life imprisonment for the offence of defilement contrary to Section 8 (1) as read with Section 8(2) of the *Sexual Offences Act*.
2. He appealed vide Siaya HCRA 32/2018 which appeal was allowed on sentence being reduced to 30 years imprisonment on 12/6/2019, when the court invoked the *Francis Muruatetu & another v Republic* [2017]eKLR decision on the constitutionality of Mandatoriness of minimum sentences under the Sexual Offences.
3. In this case, the Petitioner is lucky to have benefited from the *Muruatetu 1* decision before it was clarified in *Muruatetu II* and the *Joshua Gichuki Mwangi* (2024) eKLR cases, with findings that the minimum sentences as enacted in the *Sexual offences Act* are lawful. That being the case, I find no residual discretion left to review the sentence impose don the Petitioner which was reduced by the High Court vide HCRA 32/2028.
4. Accordingly, this petition for sentence review is hereby declined, the Petitioner having been accorded a less severe sentence.
5. Furthermore, the convict cannot claim that Section 333(2) of the *Criminal Procedure Code* was not applied since in the first place, he was sentenced to life imprisonment which has no credits for the time spent in custody.



6. This court did re-impose on him the less severe sentence which he is serving and therefore since the life imprisonment was lawful with this Court reducing it, the convict cannot seek more discretion from this court.
7. I decline to entertain any more sentence review for the convict herein and dismiss the petition dated 10/7/2023. This file is closed. Signal to issue.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

