



**Hassan v Republic (Miscellaneous Criminal Application
E023 of 2021) [2023] KEHC 21184 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2021**

JN ONYIEGO, J

JULY 28, 2023

BETWEEN

IBRAHIM ABDI HASSAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged before Garissa Chief Magistrates court with the offence of defilement contrary to section 8 (1) (4) of the [Sexual Offences Act](#). Upon conclusion of the trial, he was sentenced to 15 years' imprisonment. Subsequently, he appealed to the High Court vide Criminal Appeal No 32 of 2019. After hearing the appeal, the court enhanced sentence to 20 years.
2. Subsequently, he filed what is being referred to as a plea for leniency. He sought this court to review its sentence in view of the holding in [Muruatetu 1](#) case. The respondent opposed the application on grounds that the court had become functus officio as it had pronounced itself on appeal.
3. I have considered the application herein and the response thereof. The applicant is seeking review of sentence under the [Muruatetu](#) principle and Section 333 (2) of the [Criminal Procedure Code](#).
4. Under [Muruatetu](#) one decision, mandatory death sentence was declared unconstitutional. Thereafter, [Muruatetu 2](#) clarified by stating that [Muruatetu 1](#) was only applicable to murder cases. In view of the holding in both Muruatetu cases, the applicant does not qualify.
5. However, the Learned judge did specifically address the element of sentence. The Hon Judge stated that sentence was to start running from the date of sentence. This court cannot set aside that sentence as it will amount to sitting on my sister's decision in an appellate capacity. Only the court of appeal will do that. In other words, the issue of sentence is spent.
6. In view of the above holding, I do not find merit in the application hence the same is dismissed.



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF JULY, 2023.

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J. N. ONYIEGO

JUDGE

