



**Nyamu v Republic (Miscellaneous Criminal Application
E018 of 2022) [2023] KEHC 21611 (KLR) (28 July 2023) (Revision)**

Neutral citation: [2023] KEHC 21611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E018 OF 2022**

**JN ONYIEGO, J
JULY 28, 2023**

BETWEEN

PETER NGUI NYAMU APPLICANT

AND

REPUBLIC RESPONDENT

REVISION

1. The applicant was before Mwingi Law Courts charged with the offence of defilement contrary to section 8 (1) as read with sub-section (2) of the [Sexual Offences Act](#) Upon close of the trial he was convicted and sentenced to life imprisonment on June 26, 2013.
2. His appeal to Garissa High Court vide Cr Appeal No 16 of 2015 was dismissed undeterred, he moved to the Court of Appeal vide Appeal No 60 of 2018 Nairobi. The appeal was equally dismissed on October 23, 2020.
3. He has now come to this court via undated Chamber summons filed on November 6, 2022. Seeking review of the sentence in line with the decision in the case of [Philip Mueke Maingi & 5 others v Republic](#) Petition No E017/ 2021 and [Edwin Wachira & 9 others v Republic](#) Petition number; 97 of 2021 Mombasa where those courts allowed re –sentencing under [Muruatetu](#) case.
4. The application was opposed by the state on grounds that the court is functus officio.
5. I have considered the application herein and the response thereto. There is no dispute that the applicant was sentenced to serve life imprisonment which sentence was upheld by the High court and lower court.
6. The applicant is now inviting the court to review the sentence pursuant to [Muruatetu](#) one case which was also applied in the [Phillip Mueke](#) case where Judge Odunga expressed himself that the mandatory



sentences are unconstitutional in line with *Muruatetu 1* case. Learned Judge said mandatory sentences are not mandatory.

7. However *Muruatetu 2* directions did not clarify that mandatory death penalty was duly unconstitutional in respect to murder cases. Although Odunga Judge as he then was said that mandatory sentences in sexual offences were not binding on the trial court, he did not find the same unlawful circumstances require that it be meted out.
8. It is trite that supervisory jurisdiction conferred upon the High Court under Article 165 (6) & (3) is duly applicable against decisions made by Sub-ordinate courts and not superior courts. In this case I am being asked to review a decision of a superior court fully complied by the Court of Appeal. This court is *functus officio* hence has no power to review the sentence.
9. Order accordingly.

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

J. N. ONYIEGO

JUDGE

