



**Musa v Republic (Miscellaneous Criminal Application 37 of 2020)  
[2023] KEHC 24670 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24670 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION 37 OF 2020  
JN ONYIEGO, J  
OCTOBER 31, 2023**

**BETWEEN**

**MOHAMED MUSA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was charged with defilement contrary to section 8 (1) 2 of The *Sexual Offence Act* No. 3 of 2006. The particulars of the offence were that on the 24<sup>th</sup> day of February, 2010 in Ijara District within North Eastern Province unlawfully and intentionally caused his penis to penetrate into the vagina of ZMA a girl of the age of 9 years.
2. He was charged with an alternative count of Indecent Act with a child contrary to section 11 (1) of The *Sexual Offences Act* No.3 of 2006. Particulars were that on the 24<sup>th</sup> day of February, 2010 in Ijara District within North Eastern province, intentionally and unlawfully caused his penis to touch the vagina of ZMA a girl of the age of 9 years
3. Upon conclusion of the trial, he was convicted and sentenced to life imprisonment. Dissatisfied with both conviction and sentence, he appealed to the High Court vide Cr. Appeal Number 39 of 2013. In its Judgment delivered on 27<sup>th</sup> November, 2013 the High Court dismissed the appeal and confirmed sentence.
4. Undeterred, he further appealed to the Court of Appeal where the same is still pending hearing. Meanwhile, he filed Misc. Criminal Appeal No. 37 of 2020 the subject of this ruling seeking for review of sentence pursuant to the holding in Muruatetu one case.
5. In response, the respondent opposed the application thus stating that the same amounted to abuse of the Court process and that this court is functus officio.



6. I have considered the application herein and the response thereof. The applicant is seeking reduction of sentence pursuant to the holding in Muruatetu one in Petition Number 15 of 2015 and 16 of 2015 (consolidated). It is worth noting that vide its directions issued on 6-7-2021, in Muruatetu two, the Supreme Court clarified that the review on sentence was only applicable in Murder cases. Muruatetu one is therefore not relevant in this case.
7. Further, this court having pronounced itself on appeal, its functus officio. In any event, the applicant having appealed against the decision of the High Court before the Court of Appeal, he cannot purport to seek the same remedy in two different courts. That is indeed an act reflecting abuse of the court process.
8. Accordingly, I do not see any merit in the application herein hence the same is dismissed.

Right of Appeal 14 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 31<sup>ST</sup> DAY OF OCTOBER 2023.**

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**J. N. ONYIEGO**

**JUDGE**

