



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

PETITION NO E010 OF 2021

**GEOFFREY OCHIENG NDOLO alias ONYISL.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The Petitioner herein was tried and convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No 3 of 2006. He was sentenced to life imprisonment.
2. Being dissatisfied with the said decision, he lodged an Appeal at the High Court Kisumu in **HCCRA No 167 of 2010** which, appeal was dismissed in its entirety. There was no indication if he appealed to the Court of Appeal.
3. On 19<sup>th</sup> January 2021, the Petitioner filed this Petition for review of the sentence. His said application was supported by his Affidavit in which he relied on the case of **Francis Karioko Muruatetu & Another vs Republic [2017] eKLR, Kisumu Misc App No 55 Paul Odhiambo Mbola vs Republic** (eKLR citation not given), **Kisumu Misc App No 64 of 2019 Charles Omukuna Omunde vs Republic** (eKLR citation not given) and **Paul Ngei vs Republic [2019] eKLR**. It was not exactly clear what his arguments regarding the same were as they appeared to be hanging.
4. In his Written Submissions that were filed on 14<sup>th</sup> September 2021, he pleaded with this court to consider that he had so far spent more than ten (10) years in custody. He stated that he was the sole bread winner of his young family of a wife and two children who are now in school and are in need of his fatherly love. He urged the court to consider granting him an opportunity of shaping up his future which would otherwise be ruined by the long incarceration. He asserted that he was a first offender and very remorseful for having engaged in a criminal activity.
5. He averred that during the period he had been incarcerated, he was actively involved in rehabilitation programs. He added that he had studied the word of God through theological courses and in the process attained various certificates. He added that he had attained Certificate in Drug and Substance Abuse and believed that the skills acquired would enable him integrate well back to society.
6. He placed reliance on the cases of **Geoffrey Mutai vs Republic Narok Hccr No 5 of 2018** (eKLR citation not given) where the court found that the sentence imposed was manifestly excessive and reduced it to seven (7) years imprisonment. He also placed reliance on the South African case of **Oscar Pistorious** (citation not given) where Thokozile J observed that the purpose of sentencing “**is to rehabilitate the accused (sic) and to give him an opportunity where possible to become a member of the society once more.**”
7. The State opposed his Petition herein for review of sentence for the reason that the July 2021 directions by the Supreme Court in **Francis Karioko Muruatetu & Another vs Republic** (Supra) did not invalidate the mandatory and minimum sentences in the Penal Code, the Sexual Offences Act or other statute and hence, the same did not apply to the defilement case herein.

#### **LEGAL ANALYSIS**

8. On 6<sup>th</sup> July 2021, the Supreme Court gave guidelines in the case of **Francis Karioko Muruatetu & Another vs Republic** (Supra) to the effect that the said decision and those guidelines only applied in respect to sentences of murder under Sections 203 and 204 of the Penal Code.
9. It was emphatic that the case of **Francis Karioko Muruatetu & Another vs Republic** (Supra) was not applicable to capital offences other than murder, such as treason under Section 40 (3), robbery with violence under Section 296 (2) and attempted robbery with violence under Section 297 (2) of the Penal Code. It pointed out that the petitioners in the case of **Francis Karioko Muruatetu & Another vs**

**Republic** (Supra) had approached the court for specific reliefs.

10. It clarified that with regard to the mandatory death sentence in capital offences other than murder, such as treason under Section 40 (3), robbery with violence under Section 296 (2) and attempted robbery with violence under Section 297 (2) of the Penal Code and directed that a challenge on the constitutional validity of the mandatory death penalty be heard and determined in the High Court and then by the Court of Appeal, if necessary, whereafter a similar outcome as that the case of **Francis Karioko Muruatetu & Another vs Republic** (Supra) may be reached.

11. Notably, previous records in this matter were not availed. Be that as it may, the court opted to proceed with the documentation that had been placed before it because the fact that the Petitioner was remorseful and had undergone various rehabilitation programs could not assist him for the reason that he had been charged and convicted of the offence of defilement and not murder. As the Supreme Court decreed in its guidelines on 6<sup>th</sup> July 2021, the case of **Francis Karioko Muruatetu & Another vs Republic** (Supra) was inapplicable herein, his prayer that the court reviews his sentence thus fell by the wayside.

12. As the Petitioner had been sentenced to life imprisonment, Section 333(2) of Criminal Procedure Code Cap 75 (Laws of Kenya) was inapplicable in the circumstances of the case herein as he had been sentenced to a term of imprisonment that was indeterminate.

#### **DISPOSITION**

13. For the foregoing reasons, the upshot of this court's decision was that the Petitioner's Petition for review of sentence that was lodged on 19<sup>th</sup> January 2021 was not merited and the same be and is hereby dismissed.

14. It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2022**

**J. KAMAU**

**JUDGE**