



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**MISC. CRIMINAL APPLICATION NO. 7 (E143 )OF 2021**

**MARTIN NYONGESA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, **Martin Nyongesa Wanyonyi** was convicted of the offence of **defilement** as prohibited by **Section 8(1)** as read with **Section 8(3)** of the **Sexual Offences Act**. The trial court found it as a fact that the prosecution had proved to the required standard of proof that the Applicant had on diverse dates between 14<sup>th</sup> October 2009 and 6<sup>th</sup> November 2009 unlawful had carnal knowledge of ZW a girl then aged twelve years . He was sentenced to serve twenty (20) years imprisonment on 22nd July 2010. His Appeal to the High court was found to be without merit and was dismissed.

It is not clear whether the Applicant preferred an appeal from the decision of this court to the Court of Appeal. What is without doubt is that the Applicant on 22nd January 2021 filed an application before this court seeking to have the remainder of the period that he is yet to serve commuted to a non-custodial sentence. The Applicant states that in the period of more than ten (10) years that he has been in lawful custody, he has undertaken various courses that will serve him well upon his release from prison. He attached several certificates as proof that he had completed various trades while serving his sentence. He also attached a recommendation letter from the Prison Authorities indicating that he has been a model prisoner.

This court has carefully considered the Applicant's plea for reconsideration of his sentence. Unfortunately for the Applicant, since the clarification by the Supreme Court of the extent of the application of **Francis Karioko Muruatetu Vs R [2021] eKLR**, this court lacks jurisdiction to entertain or to consider any application for resentencing where the court had previously rendered its decision on the same. The *functus officio* rule now applies. The only remedy available to the Applicant (if he already has not done so) is to ventilate his appeal before the Court of Appeal.

In the premises therefore, the Application lacks merit and is hereby dismissed. File is ordered closed.

**DATED AT KITALE THIS 23RD DAY OF FEBRUARY 2022.**

**L. KIMARU**

**JUDGE**