



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL REVISION E258 OF 2021

MICHAEL KINYANJUI KAMAU..... APPLICANT

-VESUS-

REPUBLIC..... RESPONDENT

*(Being a Revision of the Sentence of **Hon. Ekhubi B. M., PM** of the judgment dated 6th August 2019 in Thika Chief Magistrate's Criminal Case No. 89 of 2018)*

RULING

1. **MICHAEL KINYANJUI KAMAU (Michael)**, was charged before the Chief Magistrate's Court **Thika Criminal Case No. 89 of 2018** with the offence of Defilement contrary to **Section 8(1)(2) of Sexual Offences Act NO. 8 of 2006**. In the alternative count, he was charged with the offence of indecent act with a child contrary to **Section 11(1)** of the Sexual Offences Act. The trial court by its judgment dated 6th August, 2019 convicted Michael of the offence of sexual assault under Section 5(a) of the Sexual Offences Act. The trial court substituted the offence Michael was charged with the aforestated offence and convicted him.

2. Michael has invoked **Section 362 and 364** of the Criminal Procedure Code by his chamber summons, filed in court on 6th October, 2021. By that application, Michael seeks for an order discharging him as provided under **Section 35** of the Penal Code; he also seeks for revision of his sentence as provided under the case **FRANCIS KARIOKI MURUATETU** case: and that this Court do consider the mitigations offered before the trial court.

3. It ought to be noted that Michael appealed in Criminal Appeal NO. 58 of 2020 before the Court. That appeal is pending determination.

ANALYSIS

4. I have considered the submissions filed by Micheal. Section 362 of Criminal Procedure Code (CPC) empowers the High Court to call and examine the record of any criminal proceedings before subordinate court for purpose of satisfying itself of the correctness, legality or propriety of any finding, sentence or order recorded or passed. In other words, that Section provides the High Court with power to revise order, or sentence of the subordinate court.

5. Michael on conviction was sentenced to serve the terms of imprisonment of 10 years.

6. This Court does not find any illegality or incorrectness in the sentence of the trial court. I therefore decline to revise that sentence.

7. The prayer for court to invoke Section 35 of the Penal Code cannot be granted. Discharge under that Section can only be by the trial court.

8. Michael also invited this Court to apply the case of **FRANCIS KARIOKO MURUATETU** and to reduce his sentence. On this, it needs to be recognized that whereas courts were of the view that indeed the principles of the **MURUATETU** case applied to all cases on sentencing, the Supreme Court on 6th July, 2021 gave directions in that case and stated thus: -

“We therefore reiterate that, this Court’s decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute.”

9. It follows that the principles of that case are not applicable to Michael's case.

10. Further, **Section 364(5)** of CPC forbids the court from revising an order or sentence where an appeal lies. That Section provides: -

“(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed. [Act No. 10 of 1970, Sch.]”.

11. Michael’s application in the light of the above findings fails.

12. In the end, the chamber summons filed on 6th October, 2021 is dismissed.

13. This file is hereby closed

RULING DATED AND DELIVERED AT KIAMBU THIS 21ST DAY OF FEBRUARY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Mourice

For Appellant: Michael Kinyanjui Kamau : - N/A

For Republic: - N/A

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE