



**Marita v Republic (Miscellaneous Criminal Application
8 of 2019) [2022] KEHC 11276 (KLR) (30 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CRIMINAL APPLICATION 8 OF 2019**

F GIKONYO, J

MAY 30, 2022

BETWEEN

JEREMIAH SAWE MARITA APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from Original Conviction/Sentence in Criminal Case No. 1898 of 2014
of the Chief Magistrate's Court at Narok and HCCRA 21 of 2015 at Narok)*

JUDGMENT

1. Before me is an undated application filed on 17th July 2019 seeking for orders of a rehearing and resentencing pursuant to the Supreme Court decision in the matter of *Francis Karioko Muruatetu & Another -vs- Republic* [2017] eKLR and the decision in *William Okungu Kittiny Vs Republic* [2018] eKLR.
2. The applicant was convicted and sentenced to life imprisonment in respect of the offence of defilement contrary to Section 8(1) (2) of *Sexual Offences Act* No. 3 of 2006. He filed an appeal; Narok HCCRA 21 of 2015 which appeal was dismissed.
3. When this application came before Bwonwong'a J. on 28/01/2020, the judge made an order that the applicant's application be remitted to CM's court for resentencing and it be mentioned on 18/02/2020 before the CM's court.
4. On 19th May 2021, this court reviewed and set aside the orders of 28/01/2020. The court also directed that the petition be canvassed by way of written submissions.



Petitioner's / applicant's submissions

5. The applicant submitted that the imposition of the mandatory life sentence under Section 8(2) of SOA does not permit the court to consider the peculiar circumstances of each case in order to arrive at an appropriate sentence informed by those circumstances. He cited *S vs Mchunu and Another* (AR24/11) (2012) ZAKZPHC56, *S VS Toms* 1990 (2) SA 802 (A) AT 806 (L)- 807(B), *S vs Mofokeng* 199 (1) SACR 502 (W) at 506 (d), *S vs Jansen* 1999 (2) SACR 368 AT 373(G)- (H), *Evans Wanjala Wanyonyi*, HCCR Appeal No. 174 Of 2015, [Paul Ngei Vs Republic](#) [2019] eKLR, [Dennis Kibaara Vs Republic](#) [2019] eKLR, [Geoffrey Mutai Vs Republic](#) 2018 and [Guyo Jarso Guyo Vs Republic](#) [2018] eKLR.
6. The applicant submitted that he has benefited in rehabilitative programs offered in prison facility. The achievements include certificates of 1 thirist evangelization, bible seminar on covenant love, prisoners' journey, grade III carpentry and joinery, beadwork and design, and intensive training of soap making. The applicant argued that he is ready to be productive in building the nation.
7. The applicant submitted that this court should take into account that he is a young man, was a first offender, remorseful and the time spent under Section 333(2) of the [CPC](#).
8. The applicant prayed for lenient sentence. He cited the policy direction 7:10, Ahamad Abolfathi Mohhamed and Article 50 (2) (p) (q) of [the Constitution](#).

Respondent's submissions

9. Mr. Karanja for the respondent opposed the application on the ground that the Supreme Court in directions issued on 6th July 2021 in the Francis Muruatetu case specifically stated that the principles set out were applicable to murder cases only. The current application is misguided as it does seek to re litigate the issues to a court that has already heard his appeal.
10. The respondent submitted that the sentence passed upon the applicant is legal and that the applicant has not laid any basis before this court that would make this court interfere or find that the sentence was unconstitutional. The applicant has not exhausted the appeal process if dissatisfied with the trial court and high court finding.
11. Mr. Karanja urged that the application for resentencing be dismissed.

Analysis and Determination

12. I have considered the application and submissions by both parties. I have also read the record of the trial court, the appeal and the impugned judgment of the trial court and this court. The issue of jurisdiction has arisen. Is the petition/application competent in so far as it is founded on Muruatetu decisional law?
13. The respondent argued that the directions in Muruatetu case that the principle laid therein does not apply to other cases other than those under Section 204 of the [Penal Code](#).
14. Needless to state that Muruatetu decisional law is monumental in two sense. One; it is a landmark case on section 204 of the Penal Code. But, two; in its unintended application. Following the said decision, courts were flooded with cases in which convicted persons sought for reduced, or lesser sentences on the basis of the principle laid down therein.
15. Extraordinary determination was necessary to stem the tide causing the flood. On 6/7/2021; in an attempt to turn and stem down the tides, the Supreme Court, hemmed application of Muruatetu decisional law to sentences in murder cases only. The Supreme Court reiterated that its decision in the



Muruatetu case did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute, and accordingly cautioned as follows: -

“It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution”.

16. This was a sigh of relief; applications founded on Muruatetu decision, but which did not relate to Section 204 of the Penal Code, were deemed to be incompetent, and were accordingly dismissed. In so far as this application is founded on the Muruatetu decisional law, I find it to be incompetent and is dismissed.
17. Nevertheless, there is no foreclosure of the applicant’s right to seek appropriate remedy or reduced sentence through the appellate process or on the basis of the Constitution. For this reason, I have not evaluated the substantive arguments presented in this application.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 30TH DAY OF MAY, 2022

F. GIKONYO M

JUDGE

In the Presence of :

The Applicant

Ms. Torosi for Respondent

Mr. Kasaso - CA

