



**Onjiko v Republic (Criminal Revision E311 of 2021)
[2022] KEHC 13247 (KLR) (Civ) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CRIMINAL REVISION E311 OF 2021

CW GITHUA, J

SEPTEMBER 23, 2022

BETWEEN

VIOLET AKINYI ONJIKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. In her undated Notice of Motion filed on 13th May 2021, the applicant, Violet Akinyi Onjiko seeks review of her ten years custodial sentence imposed by the trial court in Makadara Sexual Offence No. 46 of 2017 after she was convicted of the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the *Sexual Offences Act*.
2. In her application, she seeks substitution of her custodial sentence with a non custodial sentence mainly on grounds that she suffers from spinal cord problems which affect her mobility and prevents her from benefitting from rehabilitation programmes offered in prison. She has however not annexed any medical report to substantiate this claim.
3. The Offender Management Report purportedly authored by Langata Women Prison recommending the applicant to be considered for sentence review does not mention that she has any health challenges leave alone a spinal condition. In fact, the report confirms that she has been involved in several prison rehabilitation programmes.
4. Given the above, I find that the applicant has not demonstrated that she suffers from serious ill health that would justify revision of her sentence on humanitarian grounds. I say so because a perusal of the original trial court's record shows that there is nothing illegal or unlawful about the sentence that was imposed by the trial court. When passing sentence, the learned trial magistrate considered her plea in



mitigation, a probation officers report and all other relevant factors including the period the applicant had spent in custody during the trial.

5. I may also add that the applicant was lucky to have escaped with a sentence of 10 years imprisonment which was reduced to seven years imprisonment after taking into account the period she had spent in custody considering that she had been convicted of the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the [Sexual Offences Act](#) which according to the law attracts a mandatory sentence of life imprisonment.
6. It is apparent that in passing this sentence, the learned trial magistrate exercised her discretion following the holding of the Supreme Court in *Francis Karioko Muruatetu & 5 Others v Republic*, [2017] eKLR in which the court held that minimum mandatory sentences were unconstitutional to the extent that they deprived the trial court its discretion to impose an appropriate sentence depending on an accused person's personal circumstances and the circumstances of the case.
7. Though the Supreme Court's decision applied to the mandatory death sentence provided for the offence of murder under section 204 of the Penal Code, courts by analogy subsequently applied it to all offences for which the law prescribed mandatory sentences including sexual offences: See [Christopher Ochieng v Republic](#), [2018] eKLR; [Evans Wanjala Wanyonyi V Republic](#), [2019] eKLR.
8. The position has now changed with the pronouncement by the Supreme Court in the second Francis Karioko Muruatetu & Another V Republic, [2021] eKLR in which the court clarified that the 1st Muruatetu decision applied only to the mandatory sentence prescribed for the offence of murder and not all mandatory sentences including those prescribed under the [sexual offences act](#). I however find that the guidelines issued in the second Muruatetu decision were issued about two years after the applicant was sentenced and since they cannot be applied retrospectively, I have no reason to find that the sentence passed against the applicant was unlawful.
9. Besides, I am in agreement with the holding of Odunga J (as he then was) in Petition No. E107 of 2021 [Philip Mueke Maingi & Others V Director of Public Prosecutions & Another](#), that the mandatory minimum sentences prescribed for various offences in the [Sexual Offences Act](#) are unconstitutional to the extent that they denied courts discretion to pass appropriate sentences depending on the circumstances of each case.
10. For all the foregoing reasons, I am not satisfied that this application is merited and it is hereby dismissed.
It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

C. W. GITHUA

JUDGE

In the presence of:

The Applicant

Mr. Kiragu for the respondent

Ms Karwitha: Court Assistant

