



REPUBLIC OF KENYA



KENYA LAW
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**Oyugi v Republic (Criminal Petition E018 of 2022)
[2022] KEHC 14588 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E018 OF 2022
RE ABURILI, J
OCTOBER 26, 2022**

BETWEEN

GEORGE OUMA OYUGI PETITIONER

AND

REPUBLIC RESPONDENT

*(Petition for Resentencing in Kisumu CM Sexual Offence Case No. 90/2014 and in
Kisumu Criminal Appeal No. 48 of 2018 on 29/1/2020 by Hon. T.W. Cherere, J)*

JUDGMENT

1. The Petitioner herein is George Ouma Oyugi. He petitions this court for resentencing following his conviction and sentence in Kisumu CM Sexual Offence case No 90/2014 wherein he was sentenced to serve 20 years imprisonment for the offence of defilement contrary to Section 8 (1) as read with section 8(3) of the *Sexual Offences Act*.
2. He appealed *vide* Kisumu HCRA 48/2018 which appeal was dismissed on January 29, 2020 by TW Cherere, J in a judgment read by Hon FA Ochieng J (as he then was). In his petition for resentencing, he does not indicate whether he was appealed to the Court of Appeal.
3. He claims that the Mandatory Minimum Sentence imposed on him is unconstitutional and relies on the case of *Philip Mueke Mangi V Republic* Machakos HC Petition No E017 of 2021 delivered by Odunga, J on May 17, 2022.
4. I have perused the judgment by the trial court, the proceedings and judgment in the High Court.
5. The Petitioner was arrested on July 20, 2014 and was released on bond on August 4, 2014 pending trial.
6. I have considered the circumstances under which the offence was committed. The victim was aged 14 years. She was lured by the Petitioner to a bush where the Petitioner removed her clothes and defiled her. There was evidence of penetration.



7. Section 8 (3) of the *Sexual Offences Act* provides for mandatory minimum sentence of 20 years imprisonment upon conviction. Before being sentenced, the petitioner mitigated and pleaded for leniency saying he had been involved in a road traffic accident. The record shows that indeed the hearing of the case could not proceed for a while as the accused was involved in an accident. He had been undergoing treatment, he therefore, pleaded for a non-custodial sentence.
8. In his sentencing remarks, the trial magistrate Hon CN Oruo, Resident Magistrate, noted and considered the mitigations but noted that, “the *Sexual Offences Act* No 3 of 2006 does not give me the option of a non-custodial sentence. The accused will not benefit from one. At the time of the incident the victim was 14years of age. I shall therefore proceed to sentence the accused person to 20years imprisonment. 14 days Right of Appeal.”
9. Having considered the above and the principles laid down in the *Francis Muruatetu V Republic* [2017]eKLR case and the persuasive decision rendered in *Philip Mueke Mangi V Republic* [2022]eKLR, I hereby exercise discretion and resentence the Petitioner to serve 15years imprisonment taking into account the period he was in remand custody from the date of his arrest on July 20, 2014 to the date he was released on bond on August 4, 2014.
10. I so order.
11. The file is hereby closed.

Dated, signed and delivered at Kisumu this 26th Day of October, 2022

R.E. ABURILI

JUDGE

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