



REPUBLIC OF KENYA



**KENYA LAW**  
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**MKK v Republic (Petition E048 of 2021)  
[2022] KEHC 15728 (KLR) (29 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15728 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
PETITION E048 OF 2021  
SM GITHINJI, J  
NOVEMBER 29, 2022**

**BETWEEN**

**MKK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was convicted of incest contrary to section 20(1) of the *Sexual Offences Act* and sentenced to serve ten (10) years imprisonment in Kilifi SRM Criminal Case No 121 of 2014. His appeal to this court was dismissed.
2. Undeterred and seemingly encouraged by the Court of Appeal's interpretation of the decision in *Francis Karioko Muruatetu -v- R [2017] eKLR* whereby the decision was extended to sentences imposed under the *Sexual Offence Act* (interpretation which has now been rescinded by the Supreme Court), the applicant filed a petition on August 25, 2021 to have his sentence revised.
3. The applicant states that he has not invoked this court's appellate jurisdiction but jurisdiction under articles 19(3)(a) 20 (1), (2), 23 (1) (3) and 27(1) (2) (4) of the *Constitution* of Kenya, 2010. He urges this court to consider the 2 years spent in remand and deduct the same from the original sentence.
4. As earlier stated, the Supreme Court on July 6, 2021, did issue directions regarding the applicability and jurisdiction on resentencing in *Muruatetu & another -v- Republic; Katiba Institute & 4 others* (Amicus Curiae) (Petition 15 & 16 of 2015) [2021] KESC 31 (KLR) (6 July 2021) (Directions); that the Muruatetu decision [supra] only applied to those convicted in murder cases and not any other type of case or offence. The Supreme Court expressly stated inter alia: -
  - ' i. The decision of Muruatetu and these guidelines apply only in respect to sentences of murder under sections 203 and 204 of the *Penal Code*;



5. In the circumstances, since the applicant had his appeal considered by this court, and a decision rendered, this court lacks jurisdiction to reconsider his plea for resentencing.
6. The upshot is that the petition lacks merit and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2022**

**S.M.GITHINJI**

**JUDGE**

29/11/2022

In the Presence of the Applicant and Ms Mutua for the State.

