

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 128 OF 2020

FKN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein has moved this court by way of an application for review of sentence dated the 24th September, 2020.
2. He was charged in Criminal Case No. 926 of 2011 at Embu Law Court, with the offence of Incest contrary to Section 20(1) of the Sexual Offences Act No. 3 of 2006 in which he was tried and upon being found guilty was sentenced to life imprisonment. He filed an appeal being Criminal Appeal No. 32 of 2012 at Embu against the sentence but the appeal was dismissed.
3. Dissatisfied with the decision of the High Court he challenged the decision in the court of Appeal at Nyeri, but the appeal was dismissed and sentence upheld. He has now moved the court seeking review of the imposed life sentence and has relied on the following grounds; that he has exhausted all the avenues of appeal; that he is entitled for the guaranteed benefit of the law under Article 27(1)(2)(4) of the Constitution; that he is a first offender and hence entitled for the least severe punishment as enshrined in Article 59(2)(p) of the Constitution and that the indefinite nature of life sentence has disenfranchised him the rights to personal dignity hence harsh and excessive.
4. Counsel for the respondent opposed the application on the ground that the applicant had filed a similar application in Petition No. 7 of 2020. She was however not opposed to the reduction of sentence to a definite period. In view of developing jurisprudence. She urged the court to take into account the seriousness of the offence and the age of the complainant and the fact that the applicant is the father of the complainant who is expected to protect her.
5. The court has considered the application and the submissions by the parties. As submitted by the applicant, he has pursued all the avenues open to him for appeal up to the Court of Appeal wherein his appeal was dismissed.
6. Thereafter he petitioned the High Court for revision on the strength of **Francis Karioko Muruatetu & Another Vs Republic [2017] eKLR** which petition was heard and the court dismissed the same having found that it lacked jurisdiction to entertain it.
7. In the circumstances, I find that the petition herein is *res judicata* and it is hereby dismissed.
8. It is so ordered.

Delivered, dated and signed at Embu this 20th day of January, 2021.

L. NJUGUNA

JUDGE

.....**for the Appellant**

.....**for the Respondent**