

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 139 OF 2020

PATRICK KINYUA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein was on 6th day of June, 2011 arraigned in the Senior Principal Magistrate's Court at Siakago and charged with the offence of Defilement contrary to Section 8(1)(2) of the Sexual Offences Act No. 3 of 2006.
2. He also faced the alternative charge of Indecent Act with a child contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006. The trial court found him guilty of the main charge and sentenced him to life imprisonment. He appealed against the conviction and the sentence of the High Court but the appeal was dismissed.
3. He later filed a petition for revision of the sentence which was allowed by the court and consequently the life sentence imposed by the trial court was set aside and substituted with an order sentencing the applicant to serve 20 years imprisonment with effect from the date he was sentenced by the trial court.
4. The applicant has now moved this court for a further review of the sentence, in which he has urged the court to take into account the pre-trial detention period as part of the imposed sentence of 20 years in compliance with Section 333(2) of the Criminal Procedure Code.
5. In her response, counsel for the applicant submitted that the petitioner has been heard on an application for review and his sentence was reduced from life sentence to 20 years imprisonment. This was in Petition No. 20 of 2020 and the ruling in that petition was delivered on the 23rd October, 2020.
6. The court has considered the application and the submissions by both the applicant and counsel for the respondent.
7. The court is able to confirm from the record that, indeed the applicant filed an application for review in Petition No. 20 of 2020 and the court pronounced itself on the same case by reducing the sentence imposed on the applicant from life sentence to 20 years imprisonment.
8. That being the case, the application herein is *res judicata* and the court lacks jurisdiction to entertain it.
9. It is hereby disqualified.
10. 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