



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

PETITION NO.5 OF 2020

ARISING FROM CRIMINAL CASE NO.329 OF 2014-RONGO

HIGH COURT CRIMINAL CASE NO.6 OF 2015 –MIGORI

COURT OF APPEAL CASE NO.74 OF 2017 –KISUMU

LUCAS MASA HURA.....PETITIONER

-VERSUS

REPUBLIC.....RESPONDENT

IN THE MATTER OF ARTICLE 22(B) 21 (1) 20 (1) (4) OF THE CONSTITUTION OF KENYA 2010

AND ALL OTHER ENABLING PROVISION OF THE LAW.

AND

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHT AND FREEDOM OF INDIVIDUAL

UNDER ARTICLE 25(A) 26(1) (2) (3), 28, 28(a) (d) (f) 47, (1) (2) 48 and article 50 (2) (h) (p) OF THE

CONSTITUTION OF KENYA AND ARTICLE 23(1) AS READ WITH ARTICLE 165 (B) OF

THE CONSTITUTION AND

IN THE MATTER OF SECTION 8 (3) OF THE SEXUAL OFFENCE

AND

IN THE MATTER OF SECTION 345 (III) OF THE CPC LAWS OF KENYA

RULING

I have considered the application dated 6/3/2020. As per the petitioner's affidavit dated 6/3/2020 he is serving 15 years for the offence of defilement. He has served 7 years. In his Notice of Motion the affidavit seeks that the court exercises its power of reviews and grant the applicant a non-custodial sentence so as to finish the remainder of his sentence on probation and or pay an alternative.

In his supporting affidavit the applicant claims that he has gone through a lot and that he has changed in terms of behavior. He claims that the terms of 15 years is harsh that he is a sickling and that if released he will seek proper medical care out of prisons.

Mr. Otieno for the Respondent submitted that the applicant/petitioner was jailed for 15 years after defiling a child of 16 years. That the 15 years was the minimum sentence and that he leaves it to court to relook the sentence depending on the current law.

In a judgment dated 14/3/2017 Justice Mrima upheld the conviction and sentence by the trial court in SRM Criminal Case No.329 of 2014. It is correct that at that time the petitioner was sentenced in 2015 the minimum sentence was 15 years. In June 2019 the appellant's conviction was upheld by the court his appeal was dismissed. The petitioner/applicant is back seeking a review of his sentence. This matter has been before the High Court at Migori and Court of Appeal Kisumu. The Court of Appeal decision was given after the Francis Muruwatetu decision in 2017. The Court of Appeal considered all aspects of facts, law and sentence. To now seek a review of the sentence

would be asking me to relook the Court of Appeal decision. The Court of Appeal did not set aside the said sentence. In my view it was a fair sentence and I therefore find no merit in this application.

Lastly there is nothing to support the averment that the applicant/petitioner is a sickling. All in all I find no merit in the application and it is dismissed. The applicant/petitioner shall continue serving the sentence imposed.

DATED, SIGNED AND DELIVERED AT KISII THIS 25THDAY OF FEBRUARY, 2021.

R.E. OUGO

JUDGE

In the presence of;

Applicant In person -Present

Mr. Otieno Senior State Counsel Office of the DPP

Ms. Rael Court Assistant