



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 216 OF 2019

AMOS MWANGANGI MUTHIANI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner was convicted for the offence of defilement contrary to Section 8 (1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006, in Kwale CMC Sexual Offence Case No. 77 of 2016. He was sentenced to 23 years' imprisonment. Aggrieved by his conviction and sentence, the Petitioner moved the High Court vide Criminal Appeal No. 125 of 2018. Although the Petitioner's conviction was upheld, his sentence was found to be excessive and the High Court reduced the sentence to a term of 20 years' imprisonment.

2. The Petitioner has now petitioned this Court for review of sentence in view of the Supreme Court declaration in **Francis Kariokor Muruatetu & Another v Republic SCK Pet. No. 15 of 2015 [2017] eKLR**, that mandatory nature of any sentence is unconstitutional.

3. The Petitioner submitted the sentence of 20 years' imprisonment is excessive and disproportionate to the offence.

4. In mitigation, the Petitioner submitted that he was a first offender, and currently, he is the sole breadwinner for his family. He further submitted that while serving his sentence, he has undertaken several theological courses.

5. His Prison's Progress Report indicates that he is of good conduct, he is a changed person, he is a devoted Christian, and he can be a resourceful person to the society.

6. Section 8(3) of the Sexual Offences Act provides:

“A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

7. In **Yusuf Shiunzi v Director of Public Prosecution [2020] eKLR**, it was stated: *“It is not disputed that the opinion of the Supreme Court with respect to mandatory sentences applies with equal force to minimum sentences.”* This is also supported by the Kenya Judiciary Sentencing Policy Guidelines where it is appreciated that:

“Whereas mandatory and minimum sentences reduce sentencing disparities, they however fetter the discretion of Courts, sometimes resulting in grave injustice particularly for juvenile offenders.”

8. I have considered this petition especially in the light of the aforesaid **Muruatetu case**. I am of the view that this petition is an abuse of the Court process. The Petitioner appealed the trial court conviction and sentence, which was 23 years. The High Court on 14/11/2019 considered his Appeal on sentence, and while exercising its discretion, reduced his sentence to 20 years imprisonment. There is now nothing that this Court can do. The Petitioner had already been resentenced to serve a term of 20 years. This petition is an abuse of the Court process. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY MARCH, OF 2021.

E. K. O. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Anyumba for DPP

Peris Court Assistant