



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 5 OF 2020

BENEDICT NZIOKA KIMEU.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. “*The Road to Damascus experience*” aptly describes the matter before this court because before me, is a man who though convicted of defilement **Contrary to Section 8(1) as read with Section 8(4) of Sexual Offence Act No. 3 of 2006** and giving false information to a person employed in the **Public Service Contrary to Section 129(a) of the Penal Code** appears a changed man. The defilement was in regard to a girl aged 16 years who according to the proceedings from the lower court, was said to have fallen in love with the Applicant herein. The Applicant was convicted upon trial and sentenced to serve 1 year in jail for giving false information and 15 years for defilement.

2. The Applicant approached this court asking for re-sentencing after his appeal in Kitui High Court Criminal Appeal No. 15 of 2016 was unsuccessful. Looking at him in the dock, I found him standing with a gait that bespoke of a man who has really experienced a Damascus moment. His posture in the dock complete with a rosary on one hand and a bible on the other spoke volumes about the apparent transformation and strides he has made since he was convicted to serve his term in the correctional facility. He had no hesitation in admitting that he had made a mistake for which he appeared absolutely remorseful. Quoting from the **Holy Book (Job 36:5-12)**, he told this court that he had repented from his sins, and that the afflictions he had faced had served to correct him and made him encouraged.

3. To prove that he had transformed like Saul did in the Holy Book and became Paul, he produced Certificates and Diplomas which ranged from Diploma in Theology, Diploma in Discover Bible, Certificate in Leadership and an impressive report from officer in charge of Kitui Prison showing that the convict has a clean record in prison and has been a good mentor to other prisoners. He now says he is an Assistant Catechist in prison and that he has positively changed many prisoners while serving his term both in Machakos G.K. Prison and Kitui G.K. Prison.

4. This court was not surprised when the Counsel for the Director of Public Prosecution supported the application for resentencing stating that, perhaps the Applicant did not get sufficient time to mitigate against the sentence meted out against him.

5. This court finds that one of the main objective of sentencing as per the sentencing policy guidelines are; -

(i) Deterrence

To deter the offender from committing a similar offence subsequently as well as discourage others from committing similar offences.

(ii) Rehabilitation

To enable the offender reform from his criminal disposition and become a law abiding citizen.

(iii) Restorative justice

To address the needs arising from the criminal conduct such as loss and damage to the victims.

This court has considered all the above in respect to the Applicant herein and find that all the objectives of placing the Applicant behind bars have been attained. Besides that, given the supreme court’s decision in the case of **Francis Karioko Muruatetu (2017) eKLR**, I have no

doubt in my mind that this is one of those occasions where the decision from the said Supreme Court's decisions becomes quite handy for those prisoners who have reformed and transformed to deserve a second chance outside jail.

I have to commend the prison authorities for the strides they have made in reforming convicts since the promulgation of the Constitution of Kenya 2010 to become a true convectional facility with success stories such as in this instance. This is an example of a job well done and I am sure even the in charge Kitui Prison and Machakos G.K. Prison are likely to have those feelings teachers in schools normally have when their candidates perform well in examinations.

In sum this court allows this application. The Applicant has spent about 5 years in jail. The sentence of 15 years meted out in Kitui Chief Magistrate's Court Criminal Case no. 35 of 2015 and upheld in this court in Criminal Appeal No. 15 of 2016, is hereby set aside and in its place the applicant is sentenced to the period he has already served. This means he shall be set free forthwith unless lawfully held.

Dated, Signed and Delivered at Kitui this 18th day of March, 2021.

HON. JUSTICE R. K. LIMO

JUDGE