

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 84 OF 2019

HUSSEIN ABDI NOOR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant moved the court in an undated application seeking to have the court consider the case of **Francis Karioko Muruatetu & Another v Republic - Petition No. 15 of 2015** in reference to his own matter and therefore reconsider the sentence as well as apply the provisions of Section 333(2) of the Criminal Procedure Code, by considering the time served in custody and deem the time already served as adequate for the offence the applicant committed.

2. The application was opposed by the State on grounds that the case was proved beyond reasonable doubt, the conviction and sentence are lawful, and the same were upheld by this court as recent as 6th of August 2019 and the equally opposed the prayer seeking resentencing.

3. The applicant was charged in Chief Magistrate's Court Case No. 3 of 2016 with the offence of defilement contrary to Section 8(1) as read with section 8(3) of the Sexual Offences Act No. 3 of 2006. He also faced an alternative count of indecent assault with a child contrary to Section 11(1) of the said Act.

4. Upon trial the applicant was convicted and sentenced to 20 years imprisonment.

Being dissatisfied with the conviction he appealed to this court in High Court Appeal No. 18 of 2018 where the appeal was dismissed, this court affirmed the conviction and sentence.

5. This court is of the view that when the applicant appealed to this court differently constituted, he ought to have raised the issue of his sentence and indeed if he considered it unconstitutional based on the principles of **Muruatetu case**. Secondly, he should also have raised the issue of Section 333(2) at the point.

6. It would be wrong and impossible to attend to a myriad of application after appeals have failed if convicts are allowed to bring their grievances in piecemeal.

7. I am persuaded by the decision of **John Kagunda Kariuki v Republic [2019] eKLR & Sospeter Muchangi Ndwiga v Republic Criminal Revision Case No. 33 of 2019 (Embu)**

8. Secondly, this court cannot sit on appeal of a judgement of a court of concurrent jurisdiction. If the applicant was dissatisfied with the outcome of the appeal, he ought to have referred this matter to the Court of Appeal.

9. For the above reasons, the application is declined.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 24TH DAY OF JUNE, 2021.

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ALI-ARONI

JUDGE