



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

PETITION NO. E029 OF 2021

(FROM RESENTENCING PETITION NO.47 OF 2019 AT MOMBASA)

THE CONSTITUTION OF KENYA 2010(SUPERVISORY JURISDICTION AND PROTECTION FUNDAMENTAL RIGHTS AND FREEDOMS OF AN INDIVIDUAL HIGH COURT PRACTICE RULES 2013.

AND

IN THE MATTER OF ARTICLE 22 (1) OF THE CONSTITUTION

AND

IN THE MATTER OF ARTICLES 23 (1) OF THE CONSTITUTION

IN THE MATTER OF ARTICLE 19,20,21,22,23,24,25,27,28,48,50,258 AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 8 (1) AS READ WITH 8 (2) OF THE SEXUAL OFFENCES ACT NO. 3 OF 2006.

EDWARD KATANA SAFARI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

CORAM: Hon. Justice R. Nyakundi

Edward Katana Safari – Petitioner

Mr Mwangi for the state

RULING

The Petitioner Edward Katana Safari has approached this Court by way of a Petition dated 31st March, 2021 seeking a review of twenty-eight-year (28) prison sentence.

In the present petition the petitioner put two grounds; first that due to his health status he finds it impossible to serve prison sentence.

Secondly, the review sentence be considered pursuant to the provisions under Article 50(2), (a) of the Constitution it remains however inconsistent upon this court to made the following clarification. The petition was charged, tried, convicted and sentenced to life imprisonment for the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act No. 3 of 2006. He was aggrieved with the conviction and sentence which culminated in his filing an appeal to the High Court and subsequently an appeal which was dismissed for want of merit the petitioner did not stop there but proceeded to lodge a constitutional petition at Mombasa referred as Petition No. 47 of 2019. The position taken by the session judge in that petition was to vary the life imprisonment to a term imprisonment of twenty eight years form the date of arrest.

The question I pause is whether the Court has the jurisdiction to entertain the petition once more.

Determination

Now I come into an controversial area on re-sentencing where does the court draw its jurisdiction from to exercise authority to entertain a petition on re-sentencing Article 23(1) of the High Court has jurisdiction in accordance with Article 165, to hear and determine application for redress of a denial, violation or infringement of or threat to, a right or fundamental freedom in the bill of rights. The fundamental provisions on re-sentencing are earnestly provided for under Article 50 (2) (p) (q) of the Constitution as read with Article 50 (6) (a) and (b) of the Constitution.

The defined circumstances in 50 (6) of the Constitution are the ones applicable to the present petition. It is clear from the High Court that Mombasa High Court being of concurrent jurisdiction has already heard and determined the petition. In the present petition determined, I find no further new and compelling evidence that has become available to entertain the issues on review of sentence.

For those reasons I dismiss the petition for want of jurisdiction. The Petition for now is lost. It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 30TH DAY OF JULY, 2021

.....

R. NYAKUNDI

JUDGE

In the presence of

The Petitioner

Mr Mwangi for the state