

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITION NO. 50 OF 2018

JACKSON ASIACHI.....PETITIONER

VERSUS

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

RULING

1. The petitioner herein was convicted, on 26th August 2010, in Butere SRMCCRC No. of 356 of 2010, of defilement, contrary to section 8(1), as read with section 8(2) of the Sexual Offences Act, No. 3 of 2006, and sentenced to life imprisonment. The victim of the sexual assault was aged 1 year and 5 months at the time of the offence. The petitioner filed an appeal at the High Court, Kakamega HCCRA No. 178 of 2010, where the conviction was affirmed and the sentence upheld.

2. The application before me is in the nature of a summons, dated 10th October 2018, seeking a review of his sentence from life imprisonment to a definite period in years.

3. *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA), has been viewed as heralding a significant development in the Kenyan jurisprudence with respect to mandatory sentences. The petition before me should be seen in that background. I believe he seeks re-sentencing in view of the developments that I have referred to hereabove, in the belief that it affords him an opportunity for the High Court to relook at the sentence imposed by the trial court, in view of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA).

4. However, the Supreme Court has revisited the matter, in *Francis Karioko Muruatetu & another vs. Republic; Katiba Institute & 5 others (Amicus Curiae)*[2021] eKLR (Koome CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA), and held that the interpretation given to and the application of *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ & P, Mwilu DCJ & VP, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA), by the superior courts, to cover all mandatory sentences, went far beyond what the Supreme Court had intended in that decision. It was held that *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA) was of application only to convictions for murder under section 204 of the Penal Code, and that it did not cover any other offence.

5. Consequently, and in view of that, the High Court has no jurisdiction to review the sentence imposed on the petitioner, convicted of defilement, contrary to section 8(1), as read together with section 8(2), of the Sexual Offences Act, based on *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Ndung'u and Lenaola SCJJA), in Butere SRMCCRC No. of 356 of 2010, and affirmed in Kakamega HCCRA No. 178 of 2010. The petition before me has no merit, and it is hereby struck out. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26TH DAY OF AUGUST, 2021

W MUSYOKA

JUDGE