

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 64 OF 2020

BENARD MUINDE KATWEKI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. **Benard Muinde Katweki** the Petitioner herein was sentenced to life imprisonment for the main charge of defilement contrary to Section 8[1] as read with section 8[3] of the Sexual Offences Act No 3 of 2006 with an alternative charge of defilement of yet another minor. The particulars were that on diverse dates between the months of September and April 2010 at Mtongwe, Kwale County he unlawfully and intentionally committed an act which caused penetration of the vagina of EMK a child aged 13 years and the particulars of the 2nd count being on diverse dates between 1st September 2009 and 30th April 2010 he defiled a minor HB a girl aged 9 years. Judgement was delivered on 26/11/2012. He appealed against the said sentences and the same were reduced to 30 years and 20 years respectively.

2. The Petitioner is now before this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** where the supreme court found the mandatory nature of the death sentence to be unconstitutional.

3. The Petitioner submitted that the sentence imposed on him was way too harsh. He placed reliance on **Criminal Appeal No 259/2012 Ali Abdalla Mwanza v Republic** where the Court of Appeal held that the 40-year imprisonment imposed on the Appellant was excessive and the same was replaced with a 20-year sentence. He stated that he had reformed and, in his mitigation, it was submitted that he was now 48 years of age and HIV positive, that he had undertaken several rehabilitative programmes at the prison and was now ready to rejoin the society.

4. Ms. Wanjohi learned prosecutor opposed the petition and submitted that the Petitioner had defiled 13- and 10-year-old minors. The Petitioner's sentences had greatly been reduced by the Court of Appeal and there was no need to have the same further revised. It was submitted that the court had put into consideration the time that the Petitioner had spent behind bars while the matter was being heard and further that the 10 years he had spent behind bars were neither enough nor comparable to the nature of the vicious crime he had committed. Counsel urged this court to uphold the Petitioner's sentence as meted by the court of Appeal.

5. I have carefully considered the petition. Initially before new directions were issued by the supreme court on mandatory sentences, this court had the jurisdiction to interfere with the same even in sexual offences based on the circumstances of the case and the mitigating factors as was outlined in **Dismas Wafula Kilwake v R [2018] eKLR**.

6. However, the apex court did issue new directives with regard to the Muruatetu Case on 6/7/2021. The said directions were to the effect that resentencing hearings shall only be applicable to charges under Sections 203 as read with Section 204 of the Penal Code on murder.

7. This petition is therefore devoid of merit and the same is dismissed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY OF SEPTEMBER, 2021

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Anyumba for DPP

Ms. Peris Court Assistant