

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MSC. CRIMINAL APPLICATION NO. 10 OF 2021

JKKAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, JKK, was convicted of **Incest** contrary to **Section 20(1)** of the **Sexual Offences Act** and sentenced to serve fifteen (15) years imprisonment. His appeal to this Court was dismissed. Undaunted, and presumably encouraged by the court of Appeal's interpretation of **Francis Karioko Muruatetu – Vs – R [2017] eKLR** which extended the application of the said decision to sentences imposed under the **Sexual Offence Act** (which has now been restated by the Supreme Court), he has made an application to have his sentence revised.

The Applicant states that he had not appealed against the dismissal of his appeal to the Court of Appeal. He was remaining with a period of six (6) years to complete his sentence. He pleaded with the court to grant his plea for reduction of custodial sentence so that he can have a second shot at life. He had reformed. He had undertaken various Courses while in Prison including tailoring and biblical studies that have made him a better person. He regrets the crime that he committed. Mr Omooria for State opposed the application. He stated that the Applicant was convicted of a serious offence which the court should take into account.

As stated earlier in this ruling, the Supreme Court did on 6th July 2021 clarify **in Francis Karioko Murautetu V. Republic [2021] eKLR** that the above decision only applied to those convicted in murder cases and not any other type of cases. In the premises therefore, since the Applicant has already had his appeal considered by the High Court, and a decision rendered, this court lacks jurisdiction to reconsider his plea for resentencing. That jurisdiction was removed from the court in the above decision rendered by the Supreme Court.

Therefore, even if this court had sympathy with the Applicant's application, its jurisdiction has been invoked and exhausted. The application in the circumstances lacks merit and is hereby dismissed.

DATED AT KITALE THIS 23RD DAY OF SEPTEMBER, 2021.

L. KIMARU

JUDGE