



**THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**PETITION NO. 26 OF 2020**

**GEOFFREY KIONYI.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The petitioner herein was charged and convicted of the offence of defilement contrary to Section 8(1) (2) of the Sexual Offences Act No. 3 of 2006, in Marimanti Criminal Case No. 307 of 2008. He was found guilty and sentenced to 15 years imprisonment. He appealed against that decision in High Court Criminal Appeal No. 77 of 2009. That appeal was dismissed and the sentence enhanced to life imprisonment. He subsequently lodged a second appeal in the Court of Appeal in Criminal Appeal No. 270 of 2012, which was similarly dismissed.

2. He then moved this court through a notice of motion dated 22/7/2020, expressed to be premised on the provisions of Section 20(1) of the Sexual Offences Act No. 3 of 2006, Articles 23(1), 165(3)(b)(d)(i), 50(2), 25(c)(d), 51(1), 163(7) of the Constitution, principally seeking that the court be pleased to re-sentence him pursuant to the Supreme Court's judgement dated 14/12/2017 in Consolidated petition No. 15 & 16 of 2015 between **Francis Karioko Muruatetu & ano v Republic**.

3. In the petition, he contends that the trial court did not consider his mitigating factors nor did it give regard to the mandatory nature of the sentence under Section 8(1)(2) of the Sexual Offences as unconstitutional. He further contends that for the 11 years he has been in incarceration, he has undergone various rehabilitation programs hence he is ready to contribute to the Nation's development through legal means and thus considers himself deserving of a reduced sentence.

4. In opposing the request, the prosecution rigorously opposed the petition and prayed for its dismissal on the basis that only those convicted of murder and given the mandatory death sentence have the remedy of seeking re-sentencing.

5. It is in no doubt that the Supreme Court's directives issued on 6/7/2021, decreed that the decision in ***Francis Karioko Muruatetu & another v Republic [2017] eKLR*** is only applicable to the offence of murder. That notwithstanding however, here this court and the court of appeal have had the chance to consider the sentence meted to the petitioner on the merit. It would be a very untidy situation for this court to reconsider the same matter a second time without appearing to review itself. I find that where the question of sentence has been considered on appeal and decided on the merits, no request for re-sentencing presents itself for determination by this court a second time.

6. On that basis I find the application not to lie and thus order it dismissed.

**DATED SIGNED AND DELIVERED AT MERU THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2021**

**Patrick J.O Otieno**

**Judge**

**In presence of**

Petitioner in person

Mr. Maina for the prosecution

**Patrick J.O Otieno**

**Judge**