



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 29 OF 2020

(CONSOLIDATED WITH PETITION NO. 43 OF 2019)

HESBON KIRUJA MURITHI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The petitioner herein was charged with and convicted of the offence of defilement contrary to Section 8(1) (2) of the Sexual Offences Act No. 3 of 2006, in Nkubu Criminal Case No. 363 of 2008 and subsequently sentenced to serve a life imprisonment.
2. He appealed against that decision in High Court, Criminal Appeal No. 11 of 2013 had the appeal dismissed then proceeded to the Court of Appeal in Criminal Appeal No.58 of 2016, lost a third time when his appeal was dismissed and the sentence upheld.
3. He has now preferred this petition pleading that the court be pleased to resentence him pursuant to the decision by the Supreme Court in **Francis Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR**
4. In his written submissions filed on 1/9/2020, the petitioner urges the court to resentence him considering that he has learned his lesson while in prison, and he has also reformed for which he has exhibited to certificates showing that he has undertaken a course offered by Prison Fellowship in conjunction with Kenya Prison service. He beseeches the court to take into consideration the period he spent in remand as provided for under section 333(2) of the Criminal Procedure Code.
5. In opposition to the request, the prosecution contends that the petitioner is not eligible to re-sentencing in view of the Supreme Court's directives issued on 6/7/2021.
6. It is the case that the petitioner was not charged tried and convicted for murder but defilement. The supreme court in its directions of 6.7.2021 did say unequivocally that '*the decision of Muruatetu and these guidelines apply only in respect to sentences of murder under Sections 203 and 204 of the Penal Code*'.
7. I therefore agree with the submissions by the prosecution that the petitioner is not eligible to re-sentencing, as he was charged and convicted with defilement, and not murder. Accordingly, the petition is hereby dismissed.

DATED SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF NOVEMBER, 2021

PATRICK J.O OTIENO

JUDGE

In Presence of

Petitioner in person

Mr. Maina for the state

PATRICK J.O OTIENO

JUDGE