



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISCELLANEOUS CRIMINAL APPLICATION NO E015 OF 2020

WISCOSIN OTIENO OLUGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Applicant herein was tried and convicted for the offence of defilement contrary to Section 8 (2) of the Sexual Offences Act No 3 of 2006. He was sentenced to life imprisonment.

2. Being dissatisfied with the said decision, he lodged an Appeal in the High Court being, **HCCRA 111 of 2012** which was dismissed in its entirety on 21st July 2015. He appealed to the Court of Appeal in **Criminal Appeal No 127 of 2015** which court affirmed his conviction but reduced the sentence from life imprisonment to twenty (20) years.

3. On 22nd October 2020, he filed this application for review of the sentence. The said application was supported by his Affidavit in which he stated that the sentence that was imposed on him was too heavy due to the circumstances and the time he had spent in prison. In his Written Submissions, he merely stated that the reform structures should allow inmates future growth and development.

4. The State opposed his application for review of sentence for the reason that on 6th July 2021, the Supreme Court of Kenya gave fresh directives in interpreting **Francis Karioko Muruatetu & Another vs Republic [2017] eKLR** that the same only related to murder cases. It, however, pointed out that the Court of Appeal had interpreted the aforesaid case and that of **Christopher Ochieng vs Republic [2008] eKLR** in reducing the sentence from life imprisonment to twenty (20) years imprisonment. It was categorical that the Court of Appeal had considered all the issues before it before passing its Judgment.

5. On 6th July 2021, the Supreme Court gave guidelines in the case of **Francis Karioko Muruatetu vs Republic** (Supra) to the effect that the said decision and these guidelines only applied in respect to sentences of murder under Sections 203 and 204 of the Penal Code and not offences such as treason under Section 40 (3), robbery with violence under Section 296 (2) and attempted robbery with violence under Section 297 (2) of the Penal Code.

6. Having said so, this court noted that it could not review the decision of the Court of Appeal which had considered the case of **Francis Karioko Muruatetu & Another vs Republic** (Supra) in reducing the Applicant's sentence as it was higher in hierarchy in the judicial system in Kenya. This court could also not pronounce itself on Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) as the Court of Appeal directed that the Applicant's sentence would run from the date the Trial Court imposed its sentence.

7. Indeed, Article 164(3)(a) of the Constitution of Kenya, 2010 provides that:-

“The Court of Appeal has jurisdiction to hear appeals from the High Court.”

8. Further, Article 165 (6) of the Constitution of Kenya, 2010 is clear that the High Court has no jurisdiction of superior courts. It states as follows:-

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

9. The fact that the Applicant was remorseful and the fact that the Officer in Charge had recommended him for favourable consideration could not therefore assist him. His prayer that the court reviews his sentence thus fell by the wayside.

DISPOSITION

10. For the foregoing reasons, the upshot of this court's decision was that the Applicant's application for review of sentence that was lodged on 22nd October 2020 was not merited and the same be and is hereby dismissed.

11. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 16TH DAY OF DECEMBER 2021

J. KAMAU

JUDGE