



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 199 OF 2018

SAFARI KWICHA IHA.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was convicted for the offence of Defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act in Kilifi CR. 662 of 2012 and sentenced to 30 years imprisonment. He appealed in HCRA. No. 3 of 2013. The appeal was dismissed and sentence upheld.

2. The Appellant has now petitioned this court for review of sentence in view of the Supreme Court declaration in *Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 [2017] eKLR*.

Brief Circumstance of the offence

3. The particulars are that on 4th June, 2012 at [Particulars Withheld] Village of [Particulars Withheld] sub-location, Kilifi Township in Kilifi County within Coast Province intentionally and unlawfully caused his penis to penetrate into vagina of PCK aged 12 years old, a cripple and mentally retarded.

4. The Petitioner avers that the 30 years he was jailed for is unconstitutional. He has now exhausted his right of appeal and approaches court to impose an appropriate sentence upon him.

5. He further avers that the learned magistrate failed to consider his mitigation as he was a first offender, an epileptic and thus seeks leniency.

6. The prosecution submitted that the Petitioner defiled a cripple and a mentally retarded girl and prays that this court does not disturb the sentence given to the Petitioner and further that this court has no jurisdiction to interfere with the sentence.

7. I have carefully considered this petition. While dismissing the Petitioner's appeal on 4/6/2015 Judge Chitembwe observed as follows:

“The appeal lacks merit. Under Section 8 (1) (3), the minimum sentence is 20 years imprisonment. The appellant was sentenced to 30 years imprisonment. In his mitigation, the appellant stated that (sic) was epileptic and he pleaded for leniency.”

8. The Petitioner having lost the appeal could only appeal to the Court of Appeal. This court has no jurisdiction to interfere with the sentence. Accordingly, the petition herein is dismissed.

That is the Judgment of the court.

Right of Appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 30th day of March, 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Petitioner in person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant