



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**PETITION NO. 2 OF 2020**

**FRANCIS MUGENDI MWANIKI .....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

**A. Introduction**

1. Before me is a petition dated 20<sup>th</sup> January 2019 filed by the petitioner herein and in which the petitioner sought various declarations and/or orders. However, a reading of the petition discloses that the petitioner main prayer is for orders for resentencing on the basis of the Supreme Court's decision in **Francis Karioko Muruatetu & another v Republic [2017] eKLR.**

2. The petitioner pleaded that he was arrested and charged in criminal case No. 444 of 2014 at Runyenjes Law Court for the offence of defilement contrary to section 8(1) (as read together with section) (82) of the Sexual Offences Act No. 3 of 2006, convicted and sentenced to serve twenty (20) years imprisonment. Being dissatisfied with the conviction and sentence, he appealed to the High Court at Embu vide HCCR No. 62 of 2014 whereas his appeal was dismissed.

3. When the petition came up for hearing, the petitioner elected to rely on his written submissions which he had filed in court. Ms. Lokorio for the respondent submitted orally in response to the petition that she was not opposed to the revision of the sentence but urged the court to consider the circumstances of the case.

**B. Analysis of the law**

4. I have considered the petition herein, the petitioners' respective submissions as well as the respondent's response. I find that the main issue for determination are as follows: -

***a) Whether this court has the requisite jurisdiction to entertain this petition.***

***b) If so, whether the petition is merited.***

5. It is imperative that the issue of jurisdiction of this court be determined first before hearing this petition. The jurisdiction of the High court is provided for under Article 165(3) of the Constitution. Under the said article, the High court has unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation.

6. The High court further has supervisory jurisdiction over the subordinate courts on all criminal matters. The only scenario where this court can entertain a petition for review of the sentence is when exercising revisionary jurisdiction under Section 362 of the Criminal Procedure Code. The Criminal Procedure Code therefore does not provide for revision by the High Court of its own orders in regard to re-hearing on sentence is the subject in this petition.

7. It is trite law that a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. The petitioner was convicted of the offence of defilement contrary to Section 8(1) as read with 8(2) of the Sexual Offences Act No. 3 of 2016 by Runyenjes Ag. Principal Magistrate. He appealed against the judgment before this court. The said appeal was dismissed. As such the High Court upheld the conviction and sentence of the trial court. The said sentence became the sentence of this court upon the appeal being dismissed.

8. Article 164(3) of the Constitution bestows the Court of Appeal with jurisdiction to hear appeals from the High Court; and any other court or tribunal as prescribed by an Act of Parliament. Section 379(1) of the Criminal Procedure Code further provides that: -

**“A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal—**

***a) against the conviction, on grounds of law or of fact, or of mixed law and fact;***

***b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.***

**9.** It is my considered opinion that the right forum to seek for review of the order of this court is in the Court of Appeal.

**10.** It is my considered opinion that the instant petition is misconceived and incompetent and that this court does not have jurisdiction to entertain it.

**11.** Consequently, this petition is hereby struck out for want of jurisdiction.

**12.** It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 11<sup>TH</sup> DAY OF JUNE 2020.**

**F. MUCHEMI**

**JUDGE**

**In the presence of: -**

**Ms. Mati for the Respondent**

**Petitioner through Video Link**