

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 2 OF 2020

ALEX KYALO MUTUA PETITIONER

VERSUS

REPUBLIC RESPONDENT

R U L I N G

1. **Alex Kyalo Mutua** (“the petitioner”) was charged with the offence of defilement contrary to **Section 8 (1)** as read with **section 8 (2) of the Sexual Offences Act**. He was found guilty of the offence before the trial court and sentenced to twenty (20) years imprisonment.
2. He appealed against the aforesaid decision in Criminal Appeal No. 160 OF 2017 which was dismissed.
3. Vide a petition filed on 17/2/2020, the petitioner prays this court to commute the sentence and take into account that the time he had previously spent in custody. He cites the case of **Yawa Nyale v Republic [2018] eKLR, Daniel Otieno Yugi v Republic Cr. Appl No. 8 of 2015-Machakos, Ahamad Abolfathi Mohammed & Another v Republic [2018]eKLR** in support of his petition.
4. The Respondent did not oppose the application.
5. Resentencing have been as a result of the Supreme Court’s decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** where the court held the mandatory nature of the death sentence to be unconstitutional.
6. The principles set out in **Francis Muruatetu’s case (supra)** as read together with **Section 364 (5) of the Criminal Procedure Code** limits the jurisdiction of this court to instances of resentencing only when the party has exhausted his chances of appeal. Only then that a petitioner can seek resentencing in instances set out in the Muruatetu case. That is not the case in this petition.
7. To the extent that the petitioner has not exhausted his appellate rights, the petition is premature and is therefore dismissed.

DATED and DELIVERED at Meru this 30th day of July, 2020.

A. MABEYA

JUDGE