

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

MISCELLANEOUS CRIMINAL APPL. NO. 189 OF 2019

AUGUSTINE MWENDWA PASCAL.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON RE-SENTENCING

1. Augustine Mwendwa Pascal, the Applicant herein was charged with defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act.
2. The Applicant pleaded not guilty and the case proceeded to full hearing. He was convicted on the main count and sentenced to serve life imprisonment.
3. The Applicant was aggrieved by that decision and he filed an appeal to the High Court against both the conviction and sentence. The appeal was duly heard. A judgment was delivered on 14.2.2017 whereupon the appeal was dismissed and that the conviction and sentence was upheld.
4. The Applicant did not appeal against the decision to the Court of Appeal and opted to file a new Application before the High Court in which he now seeks a review of sentence pursuant to the Supreme Court decision in **Francis Kariuki Muruatetu & Another v Republic & 5 Others [2017] eKLR** declaring the mandatory death sentence unconstitutional and which in turn has given courts leeway to interfere with minimum sentences imposed.
5. The Applicant also sought to invoke section 333(2) of the Criminal Procedure Code and urged the court to consider the time spent in custody before conviction namely one year.
6. The cited case has necessitated resentencing of all persons previously sentenced to the mandatory death sentence. The applicant herein was not sentenced to death but to life imprisonment.
7. Further as pointed out by the state, this is an inappropriate application since the court is already functus officio. Such an application can only be entertained by a higher court – the Court of Appeal. This court having determined the appeal is no longer seized with jurisdiction to entertain the matter again. The applicant should proceed to the appellate court for redress. The prayer for resentencing as well as consideration under section 333(2) of the Criminal Procedure Code therefore is misplaced.
8. The upshot of the foregoing observations is that the applicant’s application filed on 16.12.2019 lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 28th day of October,2020.

D. K. Kemei

Judge