



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CRIMINAL PETITION NO. 27 OF 2019

JOSEPH MURIMI WANJIRU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner was charged with the offence of defilement of an Eleven (11) years old girl **Contrary to Section 8(1) and (2) of the Sexual Offences Act**. He was convicted and sentenced to life imprisonment as per the law provided.

The Petitioner filed a Notice of Motion application on the 22/10/2019 urging the court to re-consider and reduce his sentence upon his appeal to the High Court having been dismissed.

2. The Petitioner based his arguments and the application on the **Supreme Court of Kenya Petition No. 15 and 16 of 2015 - Francis Korioko & another –v- R (2017) eKRL** which case pronounced that minimum sentences deprived court's the exercise of discretion in sentencing, and urged for consideration of mitigating factors by the accused person, and imposition of sentences commensurate to the peculiar circumstances in each case.

3. The Muruatetu decision 2017 has been held to apply in sexual offences that carry minimum sentences by the Court of Appeal in **Dismas Wafula Kilwake –v- R (2019) eKLR** when reiterated that the reasoning in the Muruatetu decision should apply to sexual offences, and since then courts have rendered robust decisions in respect thereof.

4. While reconsidering reduction of the sentences imposed upon the Petitioner, the court must bear in mind that the victim of the offence will forever live with the shame and mental trauma caused to her. In this case, an eight year old girl was violently defiled. She will live with the memories of the events of that day for the rest of her life. – **James Okumu Wasike (2020) eKLR**.

5. In his mitigation, the Petitioner stated to have reformed, was remorseful and rehabilitated and ready to be re adapted into the society. While considering reduction of the sentence, the court is guided by the peculiar circumstances of each case and the justice that a crime should be punished in a sentence that is commensurate to the offence, and to consider that an excessive sentence does not serve the interests of justice nor of society – **S. V. Mchunu & Another (AR 24/11) (2012) ZAKZPHC6, Kwa Zulu Natal High Court**.

6. In the case **Yasmin V. Mohamed (1973) EA 370**, Madan J (as he then was) rendered that

“The High Court is especially endowed with the jurisdiction to safeguard the interests of infants, as the court is the parent of all infants. The welfare of the infants is paramount and it is dear to the heart of the court -----“

7. The Supreme Court in the Francis Muruatetu case set out the following guidelines with respect to sentencing, in regard to mitigating factors in an application for re-hearing sentence. These are

- **Age of the offender**
- **Being a first offender**
- **Whether the offender pleaded**
- **Character and guilt record of the offender**
- **Commission of the offence in response to gender – based violence**
- **Remorsefulness of the offender**

- **The possibility of reform and re-adaptation of the offender.**

8. Courts have rendered numerous decisions post Muruatetu decision in sexual offences.

I have considered the following. In **GM –V- R (2017) eKLR**, a minor aged 9 years was defiled by her father. The offender was sentenced to life imprisonment. On appeal the sentence was substituted with 15 years’ imprisonment.

In **ES –v- R(2018) eKLR**, a victim aged 10 years was defiled. The trial court sentenced the offender to life imprisonment. On Appeal, the sentence was substituted with ten years imprisonment.

In **JMK –vs- R (2019) eKLR**, the victim was 15 years old. The sentence was reduced to 10 years imprisonment.

9. Having considered the circumstances under which the offence was committed and the objectives of sentencing, and the mitigating factors, I set aside the life imprisonment and substitute it with 15(fifteen) years imprisonment. The sentence shall commence from the date the Petitioner was remanded in custody being the 15/5/2016.

Orders accordingly.

Dated, signed and Delivered at Kerugoya this 17th day of December 2020.

J. N. MULWA

JUDGE