

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

PETITION NO. 3 OF 2020

CHARO MWENI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

Coram: Hon. Justice R. Nyakundi

Petitioner in person

Mr. Alenga for the state

RULING

On 17.8.2010 the petitioner was charged and tried with the offence of defilement of a girl contrary to Section 8 (3) of the Sexual Offences Act. The trial proceeded in earnest and the end of it the petitioner was sentenced to 15 years imprisonment.

Being aggrieved with the Judgment of the trial Court he preferred an appeal to the High Court. On appeal, the appellate and division of the Court dismissed both conviction and sentence. There is no evidence on record that the petitioner filed a further appeal to the Court of Appeal. As the Law stands the High Court has jurisdiction to entertain the petitioner's petition for re-sentencing under Article 50 (6) (a) and (b) of the Constitution.

The review requested in this case does not fall within the jurisdictional nature of the review contemplated under the aforesaid Article of the Constitution. A conviction and sentence rendered under the right provisions of the Sexual Offences Act clearly do not constitute new and compelling evidence to warrant the relief for a fresh trial on sentence. On perusal of the record there is no defect apparent on the face of the Judgment to warrant a retrial on the merits.

Time has come for the Court to shy away from the recent trends on enforcement of rights and remedies sought under the Constitution, which of late have become uncertain, technical, artificial and most importantly non-purposive.

I hold the view that a purposive approach on interpretation of the Constitution will reinforce the protection of the petitioner's fundamental rights to liberty, dignity and equality before the Law and the right not be deprived of them except in accordance with the principles of fundamental justice.

In the opinion of the Court, the petition and affidavit evidence proves without a doubt it has not ripened under Article 50 (6) (a) & (b) of the Constitution to be entertained on the merits by this Court. The Court of Appeal as the final arbiter of whether the conviction and sentence pronounced by two Courts is against Law in force is yet to hear and determine the appeal.

Disposition

The petition against conviction and sentence of the petitioner is dismissed for devoid of merits and an attempt to directly invoke the Constitution to validate a retrial is not curable.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF DECEMBER 2020

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R. NYAKUNDI

JUDGE