

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CONSTITUTIONAL PETITION NO. 21 OF 2016

ONESMUS SHAURI CHOME PETITIONER

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

1. The Petitioner, Onesmus Shauri Chome was charged, tried, convicted and sentenced to serve twenty years imprisonment for defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act, 2006 (SOA). His appeal to this Court was dismissed by Stella Mutuku, J in Garissa High Court Criminal Appeal No. 29 of 2012. The judgement rejecting his appeal was delivered on 13th February, 2013.

2. On 15th November, 2016 the Petitioner filed a notice of motion pursuant to Articles 23(1), 50(2)(q) and 165(3) of the Constitution seeking a review of my sister's judgement on the grounds that the learned Judge confirmed his conviction even though the age of the complainant was not proved by way of the production of a birth certificate. The Petitioner also asserted that the learned Judge "**erred in law by failing to consider non-compliance**" of Section 211 of the Criminal Procedure Code by the trial magistrate.

3. The Petitioner filed lengthy submissions in support of his case. The submissions are geared towards demonstrating why the learned Judge ought to have allowed his appeal.

4. The Respondent opposed the application through written submissions. The Respondent's case is that the learned Judge reached the correct decision. The Respondent also asserted that this court does not have jurisdiction to deal with the matter. It is the Respondent's position that the Petitioner ought to have appealed to the Court of Appeal.

5. Does this Court have jurisdiction to review the judgement of a Court of coordinate jurisdiction in criminal matters? I have perused the submissions of the Petitioner and I do not find any statement on the question of jurisdiction.

6. The Criminal Procedure Code which governs trials in criminal cases in this country has no provision authorizing this court to review its judgement passed in exercise of its criminal jurisdiction.

7. The recourse open to a person who is aggrieved by the decision of this court is to appeal to the Court of Appeal. The appeal or review referred to in Article 50(2)(q) must be made to "**a higher court as prescribed by law.**"

8. This is not a petition under Article 50(6) of the Constitution. Even if it was such a petition, I would find the same unmerited as the Petitioner has not placed before this court new and compelling evidence to warrant a reopening of his case.

9. The Petitioner is asking me to exercise powers I do not have. He seeks to give me jurisdiction which neither the law nor the Constitution has granted me. I decline his invitation. He has approached the wrong forum. The only thing I can do in the circumstances of this case is to down my tools. I do so and dismiss the Petitioner's petition.

Dated, signed and delivered at Malindi this 25th day of October, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT