



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

PETITION NO.76 OF 2018

(CORAM: CHERERE- J.)

BETWEEN

PETER MUHIA WAIHARO.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

Introduction

1. **PETER MUHIA WAIHARO**, (hereinafter referred to as the petitioner) was charged with the offence of defilement contrary to Section 8(1) (2) of the **Sexual Offences Act No. 3 of 2006**, in that on the 2nd January, 2011 in Bungoma County he penetrated the anus of KO aged 7 years. He was convicted and sentenced to life imprisonment.
2. By a petition filed on 5th October, 2018, the petitioner has petitioned this court for resentencing.
3. Mr. Muia, learned counsel for the state opposed the petition on the ground that the Petitioner does not qualify for resentence.

Analysis and Determination

4. The Supreme Court decision in ***Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR*** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.
5. The Petitioner was not sentenced to death but to life imprisonment. As was rightfully submitted by the Mr. Muia for the state, the Petitioner does not qualify for resentence.
6. Consequently, the Petition filed on 5th October, 2018 is considered and found to have no merit and it is dismissed.

DATED AND SIGNED IN KISUMU THIS 20th DAY OF December 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Petitioner - Present in person

For the State - Mr. Muia