



REPUBLIC OF KENYA



KENYA LAW
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**Murele v Republic (Criminal Petition E032 of 2023)
[2025] KEHC 6814 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E032 OF 2023
RN NYAKUNDI, J
MAY 26, 2025**

BETWEEN

JOSPHAT MUKONAMBI MURELE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in the case as follows:

- i. That, the application be certified urgent and service thereof be dispensed with it to be heard in the first instant.
- ii. That, the honourable court be pleased to determine the petition for re-sentencing.
- iii. That, the petitioner has been in custody for a long time.
- iv. That I beg to be present during the hearing and determination of this petition.

It is stated in the further affidavit sworn by Josphat Mukonambi Murule which states as follows

- i. That I am a male adult Kenyan citizen of sound of mind versed with the fact of this
- ii. That I was convicted and sentence to serve 20 years imprisonment for the offence of defilement c/8 (1) as read with 8(3) *Sexual Offence Act* 3 of 20006 at Kabarnet law court
- iii. That after my conviction I appealed against both conviction and sentence and vide high court appeal no.32 /2013 which was dismissed by Eldoret high court.
- iv. That, I make this petition in reliance to *petition No. E017 of 2021* at high court Machakos by Justice Odunga and petition no.97 /2021 at Mombasa high court by Justice Mativo and Githinji on minimum-maximum mandatory sentences and court's discretion on determining cases on individual circumstances upon mitigation respectfully.



- v. That, I have been in prison for too long having spent 10 years so far.
 - vi. That, I am remorseful, a first offender and rehabilitated.
 - vii. That, I beg to be given a second chance and accorded the benefits of the provisions of article 50(2) (q) of the Constitution .
 - viii. That, I beg to be given a fair opportunity argue my petition before this court.
 - ix. That what I have deponed herein is true and correct to the best of my knowledge information and belief.
2. In the recent years since the Supreme Court decision in Francis K. Muruatetu 2017 eKLR there has been a sharp increase in the No. of petitions and the part of convicts relying on this dicta and other constitutional provisions seeking leave of this court and other High Courts across the country for a remedy of resentencing. Among the consequences of this rapid proliferation of Applications or Petitions on resentencing is the risk of the over lapping decisions by different courts. One result of the proliferation of adjudicatory mechanisms on resentencing was the various competing interests by petitioners or Applicants was to move one High Court to another in the so called forum shopping. This was aimed at Applicants or Petitioners submitting petitions to the most favorable forum in the region. This aspect of the forum shopping is understood to be a negative phenomenon for it has the potential to undermine the integrity and authority of the judiciary under Art, 159 of the constitution to make conflicting decisions on the same subject matter or allow endless litigation.
 3. This application in the first instance suffers from the admissibility criteria which is the power of this court to exercise its jurisdiction in this particular cause of action which has been decided by a forum of concurrent jurisdiction. Walking through this framework the doctrine of *res-judicata* binds this court from entertaining the merits of this application/petition. The same is good for dismissal under Section 382 of the Criminal Procedure Code.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 26TH DAY OF MAY 2025

R. NYAKUNDI

JUDGE

