



**Wamalwa v Republic (Miscellaneous Criminal Application
E007 of 2024) [2024] KEHC 3332 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2024**

DK KEMEL, J

APRIL 5, 2024

BETWEEN

PATRICK WAMALWA PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner herein Patrick Wamalwa has filed the present Petition seeking re-sentencing in respect of Bungoma CM CR. No. 1880 of 2014. His case is that he was convicted and sentenced to 20 years imprisonment for the offence of defilement of a girl Contrary to section 8 (i) as read with section 8 (4) of the *Sexual Offences Act* No. 3 of 2006. He later lodged an appeal at Bungoma High Court vide HCCRA No. 186 of 2015 which was dismissed on 3.11.2016. He subsequently lodged an appeal to the Court of Appeal vide CRA No. 316 of 2018 which was dismissed on 6.6.2019. He has beseeched this court to review the sentence imposed since he has reformed while in prison and that he is getting older and would be useful to the society if he is released.
2. Miss Kibet for the Respondent submitted that the court should consider the age of the victim who was then a minor and whose innocence was stolen. She submitted that the Applicant being an adult should have been mindful and protected the vulnerable girl child. It was finally submitted that the sentence was fair and should be upheld.
3. I have considered the application as well as the submissions presented. It is not in dispute that the Petitioner's appeal was dismissed by this court on 3.11.2016. It is also not in dispute that his appeal to the Court of Appeal was also dismissed on 6.6.2019. Hence, it is quite clear that the petitioner has exhausted all his appeals. That being the position, it is my considered view that this court lacks jurisdiction to entertain the matter in view of the fact that a court of similar jurisdiction heard the petitioner's appeal and dismissed it. It is noted that pursuant to the Supreme Court's decision in *Francis Karioko Muruatetu & Others vs Republic* (2017) eKLR , there has been an avalanche of



cases brought by several prisoners serving sentences for various offences where minimum sentences had been imposed. Due to the floodgate of cases by applicants seeking re-sentencing, the Supreme Court vide its guidelines dated 6.7.2021 (Muruatetu 2) pointed out that the decisional law made in 2017 was not an authority to declare minimum sentences as unconstitutional. The court went further to state that the application was limited to murder cases falling within its scope. Therefore, the Petitioner's case being one of defilement, the request for review of sentence on the cases of the *Muruatetu case* (*supra*) is without merit. The Petitioner's appeal having been determined by this court and having moved to the Court of Appeal which heard his appeal, this court has become functus officio. In the premises, the request for revision of sentence is without merit.

4. In view of the foregoing observations, it is my finding that the petition lacks merit. The same is dismissed.

DATED AND DELIVERED AT BUNGOMA THIS 5TH DAY OF APRIL 2024

D KEMEI,

JUDGE.

In the Presence of :-

Patrick Wamalwa Petitioner

Miss Kibet For Respondent

Kizito Court Assistant

