



**Muriuki v Republic (Petition E016 of 2022)  
[2024] KEHC 11235 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
PETITION E016 OF 2022  
LW GITARI, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**PETER KIAMBI MURIUKI ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed this Petition under a certificate of urgency based on the grounds that the Petitioner is serving a sentence at the G.K. Prison Embu and is suffering chronic ill health and his health is deteriorating in prison. That he is now a reformed person and seeks a second chance. That the court has jurisdiction to determine the petition. The application is urgent as the Petitioner’s life risks to be lost.
2. The Petitioner has brought the Petition under Article 23 (3) (b) (c), Article 47 and 50 of *the Constitution*, the Criminal Procedure Code and in the matter of Samuel Kiprotich Cheserek-v-Republic (2015) eKLR and Kool –v- Director of Public Prosecutions Criminal Petition *No.E011 of 2021* (2022) KEHC 571 KLR.
3. He seeks the following orders:
  - a. Reduction or committal of the sentence that he has been committed to serve in prison and to either have the same commuted and to have the Petitioner either conditionally and/or unconditionally released.
  - b. The court be pleased to make any orders, directions that it may deem fit, appropriate and desirable in the circumstances. The Petition is based on the following facts.
3.
  - A. The Petitioner is a Kenyan Citizen currently being held at GK Prison, Embu within the Republic of Kenya



- B. That the Petitioner was charged in Chuka Chief Magistrate’s Court’s Sexual Offence No.42 of 2020, convicted and sentenced to serve 15 years in prison.
- C. That the Judgment in this matter was delivered by the trial court on 4<sup>th</sup> October, 2021 and the Petitioner was sentenced to fifteen (15) years imprisonment.
- D. That on appeal the sentence was upheld.
- E. That the Petitioner faults his former counsel as he feels that he was not efficiently and effectively counseled, guided, represented and/or defended.
- F. The Petitioner has served substantial time in jail and has undergone great correction, has learnt his lesson, is fully reformed and is praying for a second chance in life.
4. The Petitioner is suffering ill health and his health is deteriorating and his continued incarceration is overwhelmingly weighing down on him.
5. That the Petitioner is now praying for empathy and mercy of this Honourable Court, and to have his sentence commuted and/or altogether waved by this Honourable Court.
6. There are available alternate mechanisms/avenues including but not limited to an appropriate Out of Court Settlement (Alternative Dispute Resolution) which are provided in Article 159(c) of the Constitution of Kenya, 2010 which states:-
- “In exercising judicial authority, the courts and tribunals shall be guided by the following principles-(c) Alternative forms of dispute Resolution including recompilation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted.”
7. The Petitioner is a first offender, has gone through serious in-depth soul-searching, regrets and is honestly remorseful for his wrongful actions that put into the path and inadvertent collision with the law.
8. That this honorable court has unfettered discretion and is vested with requisite jurisdiction to review the sentence meted against the Applicant herein.
9. Your petitioner therefore humbly seeks that this court finds:-
- a. That there are sufficient grounds to warrant either commuting or reduction of the sentence.
- b. That part of the purpose and essence for meting punishment against offenders is to correct and help offenders to reform and to rehabilitate.
- c. That inspite of the provisions of the law on sentencing in respect of the offence committed herein the petitioner is now reformed and his sentence may be either commuted or reduced.
- d. That it is right, proper and therefore desirable to give the Petitioner a second chance.
- e. That the sentence meted against the petitioner can and therefore need to be reduced and/or set aside.
10. Your petitioner contends that he is reformed and rehabilitated and therefore prays for a second chance to redeem himself and live a purposeful life.
11. That the family and community are desirous, willing and ready to receive the petitioner back into the community and to fully assimilate and have him seamlessly integrated into the established social fabric.



12. This Honourable Court may also invoke Section 333 (2) to further take into account the period spent in custody.
13. The cause of action herein arose in Tharaka within the jurisdiction of this Honourable Court.
14. The respondent opposed the petition and filed submissions and grounds of opposition. It is submitted that the petitioner was charged under Section 8(1) and 8(4) of the [sexual Offences Act](#) which provides:

“A person who commits an act which causes penetration with a child is guilty of an offence termed as defilement 8(4) A person who commits the offence of defilement with a child of between age of sixteen and eighteen years is liable upon conviction to imprisonment for a term not less than fifteen years.”

15. The respondent submits that the Petitioner was property sentence within the confines of the law.
  1. The Respondent has relied on the case of Patu Setek –v- Director of Public Prosecutions (criminal petition [E002/2022](#) KEHC 3471 (KLR) 26 April 2023 (Judgment) where the court addressed the nature and scope of the resentencing as follows:-

Nature and scope of Re-sentencing

Re-sentencing is neither a hearing de novo nor an appeal. It is proceeding undertaken within the court’s revisionary power to review sentences. The court does not consider conviction. In re-sentencing, the court will only be checking on the legality of the sentence or whether it violates the rights of applicant. The court will therefore be concerned with inter alia, the penalty law, mitigating or aggravating factors, and the objects of punishments.

Purpose of re-sentencing:

The purpose of re-sentencing is to provide an effective remedy to such injustice arising from a violation of right or fundamental freedom as was aptly explained by Majanja J in Michael Kathewa Laichena & Another –v- Republic (2018) eKLR that: ... “by re-sentencing the petitioner, the High Court is merely enforcing and granting relief for what is in effect a violation caused by the imposition of mandatory death sentence.”

16. The Respondent further submits that the petitioner has not made any effort to demonstrate any infringement of his fundamental rights or shown that there was any illegality to the sentence that was meted out against him.
  2. I have considered the Petition and the submissions by the parties. The issue which arises for determination is whether this court has jurisdiction to entertain this petition. The court of Appeal has stated that jurisdiction is everything and without it a court downs its tools. In Owners of Motor Vessel “Lilian S” –v- Caltex Oil (Kenya) Ltd (1989). The court stated that;

jurisdiction is everything without it the court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a Constitution of proceeding pending other evidence. A court of Law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction..... where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgment is given.”
17. The Petitioner was charged with defilement contrary to Section 8(1) (4) of the [Sexual Offences Act](#). He was tried and was convicted then sentenced to serve fifteen (15) years imprisonment. His appeal



to the High Court was dismissed and the court held that the sentence meted out against the appellant by the trial court was proper and in accordance with the prescribed law. Article 165 (3)(b) of *the Constitution* gives the High Court jurisdiction to determine whether the question whether a right or fundamental freedom in the Bill of Right has been denied, violated, infringed or threatened. Article 23 of *the Constitution* gives the High Court jurisdiction in accordance with Article 165(3) (b) to hear and determine applications for redress of a denial, violation or infringement or threat to a right or fundamental freedoms in the bill of rights.

18. I have considered the petition. The applicant has not pleaded any of his rights under the bill of rights has been denied infringed or threaten. What the Petitioner is seeking is a review of the sentence. This court dealt with the Petitioner’s appeal from the sub-ordinate court and upheld the sentence. The principle of ‘Functus Officio’ applies. This is a principle of law that prevents the re-opening of a matter before a court that rendered its final Judgment thereon. A court becomes Functus Officio after delivering its final Judgment. See Court of Appeal in Telkom Kenya Ltd- v- John Ochanda (suing on his own behalf and on behalf of 996 former employees Telkom Kenya Limited (2014 eKLR. This court gave its final Judgment in the appeal from the Magistrate’s Court. The court is therefore Functus Officio. The only recourse available to the Petitioner is to file an Appeal to the Court of Appeal. Article 164 (3) of *the Constitution* gives the Court of Appeal jurisdiction to hear Appeals from the High Court. Though this court can entertain a Petition under Article 165 (3)(b) of *the Constitution* it is upon the Petitioner to demonstrate that there was infringement of his rights or show that there was illegality on the sentence that was meted out. The applicant has not demonstrated that there was illegality of the sentence.
19. In Kenga-v- Republic (Criminal Appeal No. 4/2020 (2022) KECA 126 KLR (18 February 2020) Court of Appeal Malindi the Court of Appeal stated that the Supreme Court in its Directions in Francis Karioko Muruatetu & Others (2012) eKLR has earlier pronounced that its earlier decision in the same case did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other Statute and that its previous decision “cannot be authority for stating that all provisions of Law prescribing mandatory or minimum sentences are inconsistent with *the Constitution*.”
20. The Supreme Court in the case of Republic –v- Joshua Gichuki Mwangi has held that the sentence under Section 8 of the *Sexual Offences Act* remain lawful as long as Section remains valid.
21. Thus the Supreme Court has affirmed the mandatory sentences under the *Sexual Offences Act* and that the mandatory minimum sentence do not deprive Judicial Officers of the power to exercise judicial discretion.
22. In view of the foregoing, I find that this court lacks jurisdiction to entertain the Petition as the court with jurisdiction is the Court of Appeal. By dint of the Supreme Court decision the sentence imposed on the Petitioner is lawful and does not in any way infringe or violates any of his rights in the bill of rights. The Petition is not properly before this court. I order that it be dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**L.W. GITARI**

**JUDGE**

**19/9/2024**

Applicant present, virtually from Embu Prison

Ms Lydia Kijaru H/B for Mr. Kirimi

The Judgment has been read out in open court.

