

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

PETITION NO. NO 10 OF 2010

DENNIS MATEYO OMAIYO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner herein was tried and convicted of the offence of defilement contrary to **section 8 (1)** as read with **section 8 (2)** of the **Sexual Offences Act No. 3 of 2006** by Hon. Njeri Thuku (RM) at Kisii Law Courts.
2. Being dissatisfied with the said decision, the petitioner lodged an Appeal in this Court **Kisii Criminal Appeal No 118 of 2010**. In a judgment that was delivered on 5th June 2014, the Court affirmed the conviction and sentence and dismissed his Appeal in its entirety.
3. On 21st August 2020, the petitioner filed this Petition for review of the sentence. His petition is premised on the holding in the **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** and the Court of Appeal decision in **Christopher Ochieng v R (2018) eKLR Kisumu Criminal Application No 93 of 2014**. He contends that his right under **Article 25 (c), 27 (1) (2), 28 and 50 (2) (p)** has been infringed.
4. The petitioner in his submission stated that the application was for sentencing and urged the court to consider the case of **DMO v Republic [2014] eKLR**.
5. Mr. Kaino, State Counsel, made oral submissions on behalf of the prosecution. He opposed the application and submitted that the petitioner had already filed his appeal before this court and his appeal was dismissed. He argued that the case is entirely premised on the **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** which only applies to murder cases.
6. This court sitting on appeal on this matter affirmed the decision of the trial court therefore conclusively dealing with the issue on sentence. In my view therefore this court cannot be seen to sit on an appeal of its own decision.
7. I have also considered that the petitioner is premised on the **Francis Karioko Muruatetu (supra) case**; however, the Supreme Court on 6th July, 2021 gave directions that the decision in the **Muruatetu (supra) case** only applied in respect to sentences of murder under **sections 203 and 204 of the Penal Code**.
8. In the end, the Applicant's Petition for review of the sentence filed on 21st May 2020 is lacking in merit and the same is dismissed.

DATED, SIGNED AND DELIVERED AT KISII THIS 9TH DAY OF FEBRUARY, 2022.

R. E. OUGO

JUDGE

IN THE PRESENCE OF;

PETITIONER IN PERSON

MR. KAINO STATE COUNSEL ODDP

KEVIN COURT ASSISTANT