

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 218 OF 2019

MOSES MULI KING'OO.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner **MOSES MULI KING'OO** was tried and convicted of the Offence of defilement contrary to 8 (3) as read with Section 8 (2) of the Sexual Offences Act, and sentenced to life imprisonment. The Petitioner appealed to the High Court and his sentence to life imprisonment was substituted with a sentence of 20 years from the date he was sentenced by the trial court.
2. I will not go into the details of this petition since the resentence was already done by the High Court in Mombasa Criminal Appeal No. 69 of 2018 where the learned Lady Justice Njoki Mwangi in her judgment at Paragraph 59 stated, **“the provisions of Section 8(3) of the Sexual Offences Act provides for a minimum sentence of 20 years imprisonment for a person who defiles a child of 12 years of age. I therefore set aside the life imprisonment and substitute with a sentence of 20 years imprisonment. The sentence shall run from 3rd October, 2017 being the date he was sentenced by the trial court.”**
3. In my view, the Petitioner is overstretching his luck. When he appealed to the High Court, the said court reviewed his sentence from life imprisonment to 20 years in prison. This was done after the court heard the Petitioner's mitigation.
4. Justice Joel Ngugi in **John Kagunda Kariuki v Republic [2019] eKLR** held that **“.... persons whose appeals have already been heard by the High Court are not entitled to file fresh applications for re-sentencing in accordance with the new decisional law. To reach a different conclusion would lead to an ungovernable situation where all previously sentenced prisoners would seek review of their sentences.”** The petitioner's sentence was already reviewed in appeal. This court cannot purport to do it again.
5. My view is that if the Petitioner was not satisfied with the High court's decision on Appeal, he should have escalated the same to the Court of Appeal. He did not satisfy all the avenues before coming back for re-sentencing. At this juncture, the High Court cannot deal with the re-sentence and as such the Petition is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9TH DAY OF MARCH, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Mr. Fedha for DPP

Mr. Josephat Court Assistant