



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

PETITION NO. E 003 OF 2020

JUSTUS ONYANGO SIGIRIA.....APPLICANT

Versus

REPUBLIC.....RESPONDENT

JUDGMENT

The Petitioner, **Justus Onyango Sigiria**, filed this petition under Articles 21, 23, 26, 29 and 165 of the Constitution of Kenya.

The Petition is based on grounds that his mitigation was not considered; that the court failed to consider the Supreme Court decision in **Francis Mwaruatetu & Another vs. Republic (2017) eKLR** where the court declared mandatory minimum sentences unconstitutional.

The Petitioner also acknowledged that on 26/6/2019, he was convicted for the offence of defilement contrary to Section 8 (1) (as read with Section 8(3) of the Sexual Offence Act 2006 and was sentenced to serve 20 years imprisonment by Hon. Ouko, Resident Magistrate. The petitioner appealed against both conviction and sentence in HCCRA 50 OF 2019 and on 22/5/2020 A. C. Mrima J dismissed the appeal on both conviction and sentence.

The question this court poses is whether it has the jurisdiction to determine this petition.

On the first ground that the appellant was denied a chance to mitigate, the record before the trial court shows otherwise. The Petitioner was allowed to mitigate and the court took that mitigation into account before sentence. In any event he did not raise the above as a ground before the High Court. Although the petitioner invoked Articles 21, 23, 26, 29 and 165 of the Constitution, he did not allude to how the same were breached by the trial court and the same had not been raised before J. Mrima. An appeal cannot be done piece meal.

As to the issue of minimum sentence, J. Mrima exhaustively considered that issue at paragraph 33 of the judgment when he said:-

“On sentence, the Appellant was sentenced under Section 8(3) of the Sexual Offences Act to 20 years’ imprisonment. Although the court did not take into account the legal principle laid in Francis Muruatetu & Another -vs- Republic 2017 eKLR by the Supreme Court and in Kisumu Criminal Appeal No. 93 of 2014 Jared Koita Injiri v Republic [2019] eKLR by the Court of Appeal on minimum sentences, I have reconsidered the evidence and the manner in which the incident occurred. I am satisfied that the sentence of 20 years’ imprisonment was indeed reasonable. I do not think there is any reason to disturb that sentence. The appeal on sentence is likewise disallowed.

The Judge found that the appellant was deserving of the sentence meted by the trial court taking into account the aggravating circumstances. The sentence is not illegal. Having dealt with that issue on appeal, this court which is of concurrent jurisdiction cannot revisit the same.

I do agree with the submission by Learned Counsel for the State that the correct forum for the petitioner to seek redress the Court of Appeal. Returning to the High Court with the same issues is indeed an abuse of the Court process.

The Petition is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 17TH DAY OF JUNE, 2021

R. WENDOH

JUDGE

Judgment delivered in the presence of

Petitioner in person present.

Mr. Kimanthi for the Republic.

Nyauke Court Assistant.