



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**MISC CRIMINAL APPLICATION NO. 86 OF 2018**

**PLL .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, **PLL** was convicted of the offence of **Incest** contrary to **Section 20(1)** of the **Sexual Offences Act**. The trial court held that the Prosecution had established to the required standard of proof that **on 30<sup>th</sup> April 2010** in **Trans Nzoia County**, the Applicant had unlawful sexual intercourse with the complainant who is to his knowledge was his niece. The Applicant was sentenced to serve Life imprisonment. He appealed to the high Court challenging both conviction and sentence. His appeal against conviction was dismissed. His appeal against sentence was allowed. The custodial sentence of life imprisonment was reduced to twenty (20) years imprisonment. The Applicant did not prefer a further appeal to the Court of Appeal.

That would have been the end of the matter but for the window opened by the Supreme Court's decision of **Muruatetu & Another – Vs\_ Republic & Others [2017] eKLR** which declared mandatory sentences to be unconstitutional as it deprived those convicted the opportunity to mitigate before being sentenced and further deprived the courts of the mandate to sentence those convicted in accordance with the circumstances of each case.

In his application before the court, the Applicant told the court that he had been in Prison for a period of over 10 years. He was remorseful; and had learnt that crime does not pay. During the period of his incarceration, he had undergone various training, including trade tests and in the spiritual realm; skills that will make him a useful member of the society upon his release from prison. In his oral submissions before the court, the Applicant told the court that he was old and ailing. No one had visited him in prison during the entire period that he had been in Prison. He dramatically stated that the court should allow him to go home to die.

Mr Nderitu for the State opposed the application. He submitted that the crime that the Applicant committed was serious and deserves the punishment that was imposed by the court. He urged the court not to interfere with the sentence.

This court has considered mitigation of the Applicant and the response by the Prosecutor. The Applicant told the court that he has reformed in the period of slightly more than ten (10) years that he had been in prison. He has undertaken several courses that had made him a better person. He regrets the crime that he committed. He urged the court to take into account the fact that he is old and ailing. He did not tell the court his age. Neither did he tell the court what ailment he was suffering from. The Muruatetu decision gave guidelines in regard to what the court should take into account when resentencing an Applicant. This court has considered the said guidelines including the fact that the victim of the crime was a child of ten (10) years at the time. Despite the compelling mitigation by Applicant, this court agrees with the prosecution that the offence the Applicant committed was serious and deserves the custodial sentence that was imposed by the High Court. The Applicant should consider himself lucky that the earlier sentence of life imprisonment was not upheld by the appellate Court. This court is of the view that the custodial sentence that the Applicant is serving fits the crime.

In the premises therefore, this court finds the Applicant's application to be without merit. The same is dismissed. It is so ordered.

**DATED AT KITALE THIS 6<sup>TH</sup> DAY OF JULY 2021.**

**L. KIMARU**

**JUDGE**