

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC CRIMINAL APPLICATION NO. 71 OF 2018

SILAS OMULAYI OKWARA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, **Silas Omulayi Okwara** was convicted of the offence of **defilement contrary to Section 8(1)** as read with **Section 8(3)** of the **Sexual Offences Act**. He was sentenced to serve Twenty (20) years imprisonment on 17th January 2012. He has made an application before this court for a revision of his sentence pursuant to the Supreme Court's decision of **Murutetu & Others - Vs - Republic [2017] eKLR**. The Applicant told the court that he was in remand custody for a period of approximately two (2) years prior to his conviction. In the period that he has been in prison, he had not been idle but has made use of his time. He has trained to be a welder and undertook trade tests which confirm the skill that he had acquired. He was remorseful and, in his opinion, he had reformed during the period of his incarceration. He was therefore ready to return back to the society.

The Application was opposed. Mr Nderitu for the State submitted that the crime that the Applicant committed was heinous and deserved the punishment that was imposed. For added measure, he stated that the life of the victim of the crime was irrevocably damaged and could not be restored. He was of the view that the Applicant should complete his sentence.

The Supreme Court in **Francis Karioko Muruatetu & Another - Vs- Republic & Others [2017] eKLR** declared mandatory death sentences to be unconstitutional as it deprives the court from exercising its sentencing discretion especially after considering the mitigation of the accused. The reasoning of the Supreme Court in the above case was extended to mandatory sentences provided in the **Sexual Offences Act** by the Court of Appeal in **Jared Koita Injiri Vs Republic [2019] eKLR** where the Court held thus:

“ In this case, the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by Section 8(1) of the Sexual Offences Act and If the reasoning in the Supreme Court case was applied to this provision, it too should be considered unconstitutional on the same basis.”

This court therefore has jurisdiction to reconsider the sentence of the Applicant.

The Applicant states that he has been reformed in the period that he has been in Prison. He has undertaken a training in a trade which, in his view would serve him upon his release from Prison. This court accepts that indeed in the period that the Applicant has been in Prison, he is on the path to being reformed. The Applicant appears genuine in his submissions that he is remorseful for the offence that he committed. However this court cannot overlook the fact that the crime that he committed is serious and deserves the sentence that was imposed by the trial court. This court also got the impression that the Applicant was not wholly candid in the presentation of facts as narrated to the Probation Officer; that's a clear sign that the Applicant has not wholly accepted that he committed the offence and that he is serving a legal sentence. That being the case, this court cannot in the circumstances exercise its sentencing discretion in his favour.

In the premises therefore, this court finds no merit with the Applicant's application for resentencing. The sentence that was imposed fitted the crime. The same is legal. The Application is hereby dismissed. It is so ordered.

DATED AT KITALE THIS 6TH DAY OF JULY 2021.

L. KIMARU

JUDGE