REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PETITION NO. E057 OF 2021

COLLINS KIPRONO CHEBET........PETITIONER

VERSUS

REPUBLIC...RESPONDENT

JUDGMENT

[1] The petitioner, **Collins Kiprono Chebet,** seeks sentence review pursuant to **Article 50(2)(p)(q)** of the **Constitution of Kenya**. He also relied on **Articles 1(1), 2(3), 19(4), 23(1), 25(c), 159(2)(a) and (b), 165(3)(a), (b) and (d) and 258(1)** of the **Constitution of Kenya**; **Section 39(2)** of the **Sexual Offences Act, No. 3 of 2006** as well as **Sections 333(2), 362, 364(1)** and **365** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya.** The petitioner also relied on the case of **Francis Karioko Muruatetu & Others vs. Republic** [2017] eKLR. His basic prayer is that the Court be pleased to allow his petition and set aside the sentence imposed on him and either reduce it by the period spent in pre-trial detention or substitute it with a non-custodial sentence.

[2] The petition was premised on the grounds that the petitioner is a first offender and that the sentence is too harsh; that he has been in prison for a long time; that he is remorseful, repentant and reformed; that he has learned hard lessons while in custody. He added that he has suffered emotionally, physically and socially while in custody. He also prayed that his pre-trial detention period be taken into account in reckoning his sentence as required by **Section 333** of the **Criminal Procedure Code**.

[3] The petitioner relied on his written submissions filed herein on **8 June 2021** in which he reiterated that he has completely transformed and learned from his incarceration. On the authority of **Muruatetu**, the petitioner urged the Court to reconsider his sentence with a view of reducing it or substituting it with a non-custodial sentence. He also submitted that it is his fundamental right to equal protection of the law for purposes of **Articles 27 and 28** of the **Constitution**. The petitioner also mentioned that, during the period of his incarceration, he has benefitted from various rehabilitation programmes offered to inmates and produced certificates in proof of his reformation. Consequently, he urged the Court to invoke the **Judiciary Sentencing Policy Guidelines, 2016,** to further reduce his jail term of 10 years.

[4] The petition was opposed by **Mr. Mugun,** learned counsel for the State. In his view, the petition does not have any valid grounds, considering that the Supreme Court has already pronounced itself that the **Muruatetu** case is only applicable in murder cases. He accordingly urged the Court to the view that this petition is devoid of merit and therefore ought to be dismissed.

[5] A perusal of the record shows that the petitioner was arraigned before the subordinate court on a charge of rape contrary to **Section 3(1) (a)** as read with **Section 3(3)** of the **Sexual Offences Act.** He also faced an alternative charge of indecent act with an adult, contrary to **Section 11(A)** of the **Sexual Offences Act**. Although he denied the allegations against him, he was found guilty of the substantive count after trial and due process. He was accordingly convicted thereof and sentenced to the minimum penalty provided for of 10 years' imprisonment on **17 May 2019.**

[6] Being aggrieved by his conviction and sentence, the petitioner filed **Eldoret High Court Criminal Appeal No. 78 of 2019: Collins Kiprono Chebet vs. Republic**. The said appeal was likewise heard and determined on **11 February 2020**. The appeal was dismissed in its entirety by **Hon. Hellen Omondi, J.** (as she then was). He has now come back before a court of concurrent jurisdiction for the review of the sentence, as reduced by the High Court, citing **Section 333(2)** of the **Criminal Procedure Code,** among other provisions and the case of **Muruatetu.**

[7] It is instructive that the Supreme Court has since pronounced itself that **the Muruatetu Case** was not intended to apply to offences under the **Sexual Offences Act**. In its Directions dated **6 July 2021** the Supreme Court made it explicit, at paragraphs 11, 12 and 14 that:

> **[11] The ratio decidendi in the decision was summarized as follows;**
>
> **"69. Consequently, we find that Section 204 of the Penal Code is inconsistent with the Constitution and invalid to the extent**

that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment".

[12] We therefore reiterate that, this Court's decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the Penal Code, the Sexual Offences Act or any other statute.

…

[14] It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution. It bears restating that it was a decision involving the two Petitioners who approached the Court for specific reliefs. The ultimate determination was confined to the issues presented by the Petitioners, and as framed by the Court."

[8] It the light of the foregoing, it is manifest that, within the backdrop of the new directions by the Supreme Court, the petitioner has no cause for complaint at all; and that on that account his petition has no merit. Thus, without further ado, it is my finding that the instant petition is devoid of merit and is accordingly dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF SEPTEMBER 2021

OLGA SEWE

JUDGE