

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. E003 OF 2021

CORAM: HON. R.E. ABURILI, J

JOSEPH OWINO ODERA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Application arising from Kisumu High Court Criminal Appeal No. 116/2012 AND

Originating from Bondo Principal Magistrate's Court in Cr. Case No. 561 of 2011)

RULING

1. The applicant was convicted of the offence of defilement contrary to Section 8(1) as read with subsection (2) of the Sexual Offences Act. He was sentenced to serve life imprisonment vide Cr. No. 561/2011 at Bondo PM's court. He claims that he appealed vide Kisumu HCRA 116/2012 which was dismissed and his appeal to the Court of Appeal vide CRA 58/2013 was dismissed too. He is now before this court claiming that the sentence was unconstitutional, citing the Francis Muruatetu decision.
2. I have considered the application by the convict and the recent directions given by the Supreme Court on the Francis Muruatetu decision.
3. I am satisfied that the life imprisonment imposed on the convict is lawful and not unconstitutional.
4. The application has not demonstrated what constitutional rights were violated by the imposition of lawful sentence under Section 8(2) of the Sexual Offences Act or that he was denied the right to mitigate.
5. Accordingly, the application is hereby dismissed.
6. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF SEPTEMBER 2021

R.E. ABURILI

JUDGE