



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPL. NO. 3 OF 2020**

**DAKANE OSMAN ABDI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. In his application by way of a Chamber Summons filed in court on the 21<sup>st</sup> of January, 2020 the applicant seeks for resentencing based on the decision of **Francis Karioko Muruatetu & Another vs Republic, Supreme Petition No. 15 & 16 (consolidated) (Muruatetu Decision)**.
2. The background to the case is that the applicant was initially charged with the offence of defilement contrary to Section 8(1) & (2) of the Sexual Offences Act No. 3 of 2006. He denied the charge, the matter went to full trial, he was convicted and sentenced to life imprisonment.
3. Dissatisfied with the conviction and sentenced he appealed to this court in High Court Criminal Division No. 151 of 2011 and where on the 10<sup>th</sup> of July 2014 the appeal was dismissed.
4. In his affidavit in support of the application the Appellant indicated that he has an appeal pending meaning he was dissatisfied with this court's judgement and he preferred an appeal to the Court of Appeal. At submission he denied though that he preferred an appeal. Indicative also is that the original file remains in this court.
5. Whether there is an appeal pending or not this court (differently constituted) upheld the conviction and sentence and in the order of things this court cannot sit on appeal against a decision of a court of concurrent jurisdiction.
6. Secondly, in its recent directions dated 6<sup>th</sup> July 2021, the Supreme Court clarified and made it clear that the **Muruatetu** decision ought not to be interpreted as to apply to all other cases and/or statute that provide for minimum or maximum sentences as the **Muruatetu** case specifically dealt with **Section 204 of the Penal Code**.
7. Clearly therefore the **Muruatetu** decision does not assist or apply to the matter before court and cannot be a basis for resentencing.
8. For the reasons above the application fails.

It is dismissed.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 7<sup>th</sup> DAY OF OCTOBER, 2021.**

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**ALI-ARONI**

**JUDGE**