



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERUGOYA

MISC. CRIMINAL APPLICATION NO. 3 OF 2020

(From original conviction and sentence in Criminal Case No. 17 of 2015 of the Principal Magistrate's Court at Gichugu & Criminal Appeal 19 of 2017 Kerugoya High Court)

SIMON KINYUA MURIUKI...PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Petitioner Simon Kinyua Muriuki was charged and convicted for the offence of Defilement **Contrary to Section 8 (1) as read with Section 8 (3) of the Sexual Offences Act No. 3 of 2006**. He was sentenced to serve 25 years imprisonment on the 17.3.2017.

His appeal to this court vide **HCRA No. 19 of 2017** was dismissed.

2. Pursuant to "**Muruatetu**" Supreme Court decision - **Francis Muruatetu Karioko V. R Petition No. 15 & 16 (Consolidated) (2015)**, the petitioner has now approached this court for re-sentence hearing.

The "**Muruatetu**" decision was rendered on the 14.12.2017. Since then, re-sentence hearing by all courts below have exercised their discretion in re-sentencing where there existed death minimum and mandatory sentences, notably Robbery with Violence, Attempted Robbery with Violence, Sexual Offences Act among others.

3. On the **6.7.2021**, the Supreme Court in order to give clarity to the applicability of its decision on the 14.12.2017, gave policy guidelines thus the decision on "**Muruatetu**" dated 14.12.2017 apply **ONLY** in respect to sentences for the offence of **Murder Contrary to Section 203 and 204 of the Penal Code**.

Thus, applications for sentence – rehearing based on the "**Muruatetu**" decision for any other offences save for murder as aforesaid shall not be entertained.

4. For the foregoing, this petition is dismissed.

Dated and Signed this.....day of.....2021

J. N. MULWA

JUDGE

DATED AND DELIVERED AT KERUGOYA THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2021

R. M. MWONGO

JUDGE