



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CONSTITUTIONAL PETITION NO. 54 OF 2019

ISAAC OJWANG' OKOYO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

(Being a Petition for resentencing in Siaya Principal Magistrate's Court Criminal Case No 314 of 2004

and Kisumu vide High Court Criminal Appeal No. 77 of 2008, and Court of Appeal

(Appeal Number not cited)

JUDGMENT

1. The Petitioner Isaac Ojwang Okoyo was convicted for the offence of **defilement of a child contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006** and sentenced to serve life in prison vide – **Siaya Principal Magistrate's Criminal Case Number 314 of 2004**.
2. He appealed to the **High Court at Kisumu vide High Court Criminal Appeal Number 77 of 2008** but the appeal was dismissed.
3. He does not cite the Court of Appeal number but he claims his appeal to the Court of Appeal was dismissed.
4. He now seeks for resentencing by virtue of the principle espoused in **Francis Karioko Muruatetu and Another Versus Republic [2017] eKLR** that Mandatory death sentence is unconstitutional as it deprives the trial court of discretionary power to mete out appropriate sentence having regard to mitigation and circumstances of each case.
5. Further, that the Court of Appeal in **Christopher Ochieng Versus Republic [2018]eKLR** Kisumu held minimum mandatory sentences are unconstitutional.
6. In his oral submissions to the Court, the Petitioner stated that he was born in 1940 and was jailed when he was aged 63 years old. He stated that he regretted the offence. That he was married but his wife died and that he had been in prison for now 12 years. He asked for forgiveness saying he can never repeat such an offence as he was now born again Christian and when he gets out of prison, he will teach others not to commit crimes. He produced certificates in Biblical Studies and National Trade Test in Upholstery.
7. The Respondent represented by Mr. Okachi Senior Principal Prosecution Counsel submitted that sentence imposed was lawful but that the Petitioner had learnt his lessons in prison for the period he had served hence he can be considered for the period served to return to the society to be a good ambassador to young and old people.
8. I have considered the Petition filed on 11.11.2019 and submission by the Petitioner and Counsel for the Respondent. There is no doubt that the Petitioner committed a heinous crime of defiling a child aged 11 years about 12 years ago and was lawfully sentenced to serve life in prison as stipulated in **Section 8 (2) of the Sexual Offences Act**.
9. The Petitioner was then aged 63 years and is now about 75 years. He is quite old. He has served 12 years in prison where he had learnt life's skills in Upholstery and Biblical Studies. He also regrets the offence and is remorseful.
10. In my view, the Petitioner was serving lawful sentence which was imposed on him prior to the 2010 Constitution. However, the Mandatoriness of minimum sentences has successfully been challenged vide **Court of Appeal Criminal Appeal 93 of 2014 Jared Koita Injiri Versus Republic [2019] eKLR** among other decision.

11. The Petitioner is now quite old and has learnt his lessons in prison. He can be a good ambassador for reform to the society which is bedeviled by the evil spirit of defilement of young children.

12. On account of his old age, and remorse, I resentence the Petitioner to the period already served in prison. Therefore, unless otherwise lawfully held, the Petitioner shall be released from prison.

Dated, Signed and Delivered at Siaya this 21st day of January, 2019

R.E. ABURILI

JUDGE

In the presence of:

The Petitioner in person

Mr. Okachi SPPC for Respondent

CA: Brenda and Modestar