



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. 62 OF 2019

STEPHEN OLOO ODHIAMBO PETITIONER

VERSUS

REPUBLIC RESPONDENT

(Being a Constitutional Petition for resentencing against sentence in Bondo Principal Magistrate's Court Criminal No. 1748 of 2009; before and High Court Kisumu CRA NO. 31 of 2011 and Court of Appeal No. 50 of 2014)

JUDGMENT

1. The Petitioner Stephen Oloo Odhiambo Petitions this Court for resentencing. He was convicted and sentenced to serve life imprisonment vide **Bondo Senior Resident Magistrate's Criminal Case [S.O.] No. 1748/2009 on 9.2.2011 for the offence of Defilement of a child aged 4 years.**
2. He admitted that he had previously at the Principal Magistrate's Court Siaya been convicted and sentenced to serve two years imprisonment for the offence of attempted rape.
3. Following his conviction for defilement, he appealed to the High Court at Kisumu vide Kisumu HCCRA 31/2011 which appeal was dismissed.
4. He then filed an appeal to the Court of Appeal at Kisumu vide Kenya Criminal Appeal 50 of 2014 which appeal was also dismissed.
5. Having exhausted all appeal channels, the Petitioner now Petitions this Court for resentencing on the strength of the Supreme Court of Kenya decision in the case of **Francis Karioko Muruatetu and Another and Republic Petition Nos. 15 and 16 of 2015 [2017] eKLR** which set a precedent that mandatory death sentence was unconstitutional in so far as it deprives the Court of Judicial discretion to mete out appropriate sentence having regard to the circumstances of each case and that it also deprives the convict the opportunity to mitigate before sentencing.
6. The above decision has been applied mutatis Mutandis in Sexual Offences which carry mandatory minimum sentences upon conviction. In **Jared Injiri Koita v Republic [2019] eKLR** the Court of Appeal applied the principles espoused in the **Francis Karioko Muruatetu V. Republic (supra)** Petition and Interfered with Mandatory Minimum sentence meted out on a Sexual Offence Convict.
7. The Petitioner in this Petition says that he is aged 28 years old. He submits that he used to be idle that is why he committed the Offences but that now he has reformed and that he has learnt carpentry and joinery in prison.
8. He has shown to the Court a certificate to that effect issued in December 2017.
9. The Prosecution Counsel Mr. Okachi submitted that there is no evidence that the Petitioner has reformed or that he will not be idle. That the offence of defilement is serious and traumatizing to the victim who was only 4 years old hence the Court should impose a long term sentence.
10. I have considered the Petition and arguments for and against. I have considered the fresh mitigation by the Petitioner and the circumstances under which the offences was committed as per the proceedings and judgment of the trial Court supplied to this court, which verdict was upheld all the way to the Court of Appeal. I have also taken into account the age of the Petitioner and the victim of the offence of defilement.
11. The Petitioner was sentenced to serve mandatory life imprisonment which is no longer fashionable in legal circles despite the seriousness of the offence.

12. The purpose of sentencing is to give the offender a chance to be rehabilitated and to reform and to punish him for his wrongdoing to the victim. In my view, idleness should never be an excuse for one to defile a child or to engage in heinous crimes which attract heavy penalties. Children need care and protection not to be preyed on by sex pests.

13. For all the above reasons, I exercise discretion and allow the Petition for resentencing and set aside the life imprisonment meted out on the Petitioner and substitute it with a prison term of fifty years to be calculated from the date of sentencing in the trial Court as the Petitioner is a repeat offender.

14. Orders accordingly.

Dated, Signed and Delivered at Siaya this 22nd Day of January 2020

R. E. ABURILI

JUDGE

In the presence of:

The Petitioner in person

Mr. Okachi SPPC for the Respondent

CA: Brenda and Modestar