



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL PETITION NO. 37 OF 2018

MESHACK SIMIYU MUKOLWE.....PETITIONER

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. The Petitioner was charged before the Chief Magistrate's Court at Kitale, with the offence of defilement contrary to section 8(1) as read with Section 8(2) of the Sexual Offences Act and sentenced to serve twenty years in prison on **6/11/2012**.
2. The Petitioner filed **Criminal Appeal No. 121 of 2012** before the Kitale High Court and the same was dismissed. He filed a second appeal being **Eldoret Criminal Appeal No. 110 of 2017** where the court ordered for re-hearing of the High Court Appeal by a judge of the High Court.
3. He has now filed the instant Petition urging the Court to reconsider the sentence. The main contention is that in view of the Supreme Court decision in the case of **Francis Kariuko Muruatetu & Another –V- Republic (2017) eKLR**, the court should consider the twenty years sentence imposed on him
4. The petitioner filed certificates to demonstrate that he had reformed and had underwent various rehabilitative programmes. The officer in charge of Kitale Main Prison also wrote a recommendation letter in support of the petitioner's claim.
5. In the **Francis Muruatetu case (supra)**, the Supreme Court held as follows:

The mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26(3) of the Constitution.

6. The current case relates to a charge of defilement under Section 8(2) of the Sexual Offences Act. In the case of **Jared Koita Injiri vs. Republic [2019] eKLR**, the Court of Appeal applied the **Muruatetu** decision *mutatis mutandis* to the provisions of mandatory minimum sentences as provided for in the **Sexual Offences Act**.
7. It is worth noting that this matter was referred back to the High Court for re hearing and not re sentencing. It would appear that the Petitioner has grounded his Petition on the Muruatetu doctrine. I am of the view that he cannot benefit from the doctrine propounded in **Muruatetu Case**. I therefore dismiss his petition for re-sentencing as unmeritorious.

Signed, Dated and Delivered at Kitale on this 3rd day of March, 2020.

H.K. CHEMITEI

JUDGE

3/3/2020

In the presence of:

M/s Kagai for the Respondent

Applicant – present

Court Assistant – Kirong

Ruling read in open court.