



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CONSTITUTIONAL PETITION NO. 101 OF 2019**

**SIAKO ANYONA.....PETITIONER**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. **Siako Anyona** (‘the Petitioner’) was charged with the offence of defilement in CRC No. 883 of 2009 at the SRM’s Court at Ogembo and sentenced to life imprisonment after he pleaded guilty. His appeal to the High Court vide HCCRA 138 of 2009 and Court of Appeal vide case 294 of 2012 were dismissed.

2. In his petition filed on the 11<sup>th</sup> November 2019 the petitioner avers that based on Supreme Court decision in the case of **Francis Karioko Mururatetu & Another vs Republic [2017] eKLR** it was held that the mandatory sentences deprive courts of the legitimate jurisdiction to exercise discretion to individualise an appropriate sentence to the relevant aspects of the character and record of each accused person and that the Court of Appeal in **Christopher Ochieng vs Republic eKLR Kisumu Criminal Appeal No. 93 of 2014** held that the minimum mandatory sentences are unconstitutional and that his right under Article 25 (c) , 27 (1) (2) 28 and 50 (2) (p) of the Constitution were violated. That his right to mitigation under section 329 of the CPC was rendered ineffective during sentencing by the mandatory nature of the sentence.

3. Siako in mitigation stated that he is now 60 years old and that he has been in jail for ten and half years.

4. Mr. Otieno for the State did not oppose the petitioner’s application for re-sentencing.

5. The petitioner relies on the Supreme Court decision in **Christopher Ochieng vs Republic (supra)** which declared the death sentence as being unconstitutional. The court of appeal held as follows in the said case;

***“In this case, the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by Section 8 (1) of the Sexual Offences Act, and if the reasoning in the Supreme Court case was applied to this provision, it too should be considered unconstitutional on the same basis. .... Needless to say, pursuant to the Supreme Court’s decision in Francis Karioko Muruatetu & another – v- Republic (supra), we would set aside the sentence for life imprisonment imposed and substitute it therefore with a sentence of 30 years’ imprisonment from the date of sentence by the trial court.”***

6. In the case of **Jared Koita Injiri vs R Criminal Appeal No. 93 of 2014 [2019] eKLR** the Court of Appeal held as follows

***“Arising from the decision in Francis Karioko Muruatetu & Another vs Republic, SC Pet. No. 16 of 2015 where the Supreme Court held that the mandatory death sentence prescribed or the offence of murder by section 204 of the Penal Code was unconstitutional. The Court took the view that;***

***“Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives that the Courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in an appropriate case. Where a Court listens to mitigating circumstances but has, nevertheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to the accused persons under the Article 25 of the Constitution; an absolute right.”***

***In this case the appellant was sentenced to life imprisonment on the basis of the mandatory sentence stipulated by section 8 (1) of the Sexual Offences Act, and if the reasoning in the Supreme Court case was applied to this provision, it too should be considered unconstitutional on the same basis.”***

7. On the basis of the above cited Court of Appeal decision the petitioner application for resentencing is in order.

8. The petitioner was convicted of defiling a girl aged 10 years on his own plea of guilty. In mitigation before the SRM's court he asked for leniency and promised not to repeat it again. He has asked the court to consider that he is now 60 years and has been in jail for ten and half years.

9. Having considered the facts of the case, the age of the victim, the fact that the petitioner pleaded guilty, and that he has been in jail for a period of eleven (11) years I set aside the life sentence imposed by the SRM's court and substitute it with a sentence of **30 years from the 10<sup>th</sup> June 2009** the date he was sentenced by the trial court.

**Dated, signed and delivered at Kisii this 11<sup>th</sup> day of June 2020**

**R.E.OUGO**  
**JUDGE**

**In the presence of:**

**Petitioner    In Person**

**Mr. Otieno    Senior Prosecution Counsel Office of the DPP**

**Ms Rael        Court Assistant**