



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA NAROK

MISC CRIMINAL APPLICATION NO. 3 OF 2019

JOHN MAINA KARANJA..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application arising from the judgement of Hon Mr. Justice J. M. Bwonwong'a, delivered on 1/8/2018 in Criminal Appeal No. 136 of 2017 in Narok High Court, John Maina Karanja v Republic)

RULING

The case for the petitioner

1. The applicant has applied for a re-sentencing hearing following the dismissal of his appeal in respect of a sentence of life imprisonment imposed upon him on 1/8/2018 by this court. The application is filed by way of notice of motion. It is supported by the grounds that are set out on the face of the notice of motion and upon a nine (9) paragraphs supporting affidavit sworn by the applicant.
2. The application is supported by four grounds that are set out on the face of the notice of motion. The following are the major grounds. He applies that his application for a re-hearing of his sentence be determined. His application is supported by his supporting affidavit. The application is based on the case of *Francis Karioko Muruatetu & Another v Republic, Petition No 15 of 2015*, among other authorities.
3. The following are the major averments in his supporting affidavit. He was sentenced to life imprisonment following his conviction for the offence of defilement contrary to section 8 (1) as read with 8 (2) of the Sexual Offences Act No 3 of 2006. He was not accorded a fair trial as required by article 50 (2) (q) of the 2010 Constitution of Kenya. He relies on the case of *Francis Karioko Muruatetu & Another v Republic, Petition No. 15 of 2015*, which decided that courts are not bound to impose the statutory prescribed minimum sentences.
4. The applicant has also supported his petition with written submissions, which I need not set out here for reasons that will appear below in the ruling.

The case for the respondent

5. Counsel for the respondent filed submissions, in which she highlighted the jurisdiction of this court in respect of a re-hearing on sentence. She also made submissions in respect of the aggravating and mitigating factors in respect of the sentence. She cited the case of *Francis Karioko Muruatetu & Another v Republic, Petition No. 15 of 2015, supra, and William Okungu Kittiny v Republic [2018] e-KLR*, in addition to other cases. In the latter case, the Court of Appeal stated that the decision in the former case barred prospective petitioners from filing petitions in the Supreme Court and that it did not prohibit the courts below from ordering re-sentencing hearings in matters pending before them. Counsel finally urged the court to pass a sentence that befits the crime.

Issues for determination.

6. I have considered the grounds in support of the notice of motion and the supporting affidavit. I have also considered the submissions of the prosecution. I find the following to be the issues for determination.

- 1) Whether this court has jurisdiction to hear and determine this application.
- 2) What are the appropriate final orders?

Issue 1.

7. In sentencing the appellant, the court in paragraph 19 of its judgement stated that:

8. “As regards sentence the appellant has submitted that the sentence of life imprisonment is unconstitutional. He relied on a number of authorities both local and those of the European Court of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) in support of his argument. I find that the sentence imposed upon the appellant is permitted by both the constitution and the Sexual Offences Act. I further find that the sentence was merited. In the circumstances I find that his submissions are lacking in merit and are hereby dismissed.”

9. The court after delivering its judgement on 1/8/2018 proceeded according to the record of the proceedings to explain to the appellant that he had a right of appeal.

10. I find that the decision in *Francis Muruatetu & Another v. Republic, supra*, and the authorities cited are inapplicable in the circumstances of this application.

11. In the light of the foregoing reasons, I find that this court has no jurisdiction to hear and determine this application. For to do so, will amount to this court sitting as an appeal court over its judgement. Additionally, this court is *functus officio*.

12. It is for this reason that I did not fully set out the submissions of both parties as is generally the practice; since they were not necessary in the light of my finding that I lack jurisdiction to hear and determine this application.

13. In the premises, the application fails and is hereby dismissed.

Ruling signed, dated and delivered at Narok this 20th day of July, 2020 through video link conference in the presence of the appellant and Mr. Karanja for the Respondent.

J. M. BWONWONG’A.

J U D G E

20/07/2020