IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO. 59 OF 2020

SONJOI OLE SORDO.....APPLICANT

VERSUS

REPUBLIC.....STATE

RULING

1. The Applicant was arraigned before the ***Narok Chief Magistrate in Criminal Case No. 18 of 2016*** charged with a single count of defilement contrary to section 8(1) as read together with section 8(2) of the Sexual Offences Act. The particulars were that on diverse dates between January 2016 and 4th February, 2016 a Ntulele Trading Centre in Narok County, the Applicant unlawfully and intentionally caused his penis to penetrate the vagina of IW, a girl aged 6 years.

2. After a fully-fledged trial, the Trial Court convicted the Applicant and sentenced the Petitioner to life imprisonment.

3. The Applicant was aggrieved by both the conviction and sentence. He appealed to the High Court in Narok. His appeal was heard and determined by the Learned Justice Bwononga.

4. As aforesaid, among the issues the Applicant specifically took up on appeal was the sentence imposed. He argued that the sentence was manifestly harsh and excessive in the circumstances. The Learned Judge considered the arguments by the Applicant and rendered himself as follows on the question:

> *21. In ground 10, the Appellant has faulted the trial court both in law and fact for imposing a manifestly harsh and excessive sentence of life imprionsment. In sentencing the appellant the trial court took into account that the defilement of the 6 years old minor (sic) was done repeatedly over an extended period by giving her shs. 10/=.*
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> *22. Furthermore, the trial court found the appellant to be a dangerous sexual predator. These were aggravating factors. The trial Court failed to take into account that the appellant was a first offender, which was a mitigating factor. According to Kibigen v R (1975) EA 250, even where a minimum sentence is prescribed, the appropriate sentence must be assessed in ordinary way and, if it is less than the minimum sentence the minimum sentence must be imposed.*
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> *23. I have taken into account that the Appellant was a first offender, which was a mitigating factor and the aggravating factors namely repeatedly defiling a minor aged 6 years over an extended period, and I find that the prescribed minimum of sentence of life imprisonment (sic) was deserved. I find no basis to interfere with the sentence imposed and I therefore dismiss this ground of appeal.*

5. The Applicant filed the present Application before the High Court after this judgment was rendered seeking for orders of resentencing under the ***Muruatetu doctrine***. The Applicant argues that the mitigation he offered to the Trial Court was not considered and that therefore there should be a new sentencing hearing in line with the decision in ***Francis Karioko Muruatetu & Another v Republic [2017] eKLR***.

6. The Learned Justice Bwononga recused himself from hearing the Application because he had heard the appeal. The Application was, hence, sent to Nakuru High Court for hearing and disposition.

7. I have considered the Application. The Application cannot lie. The points the Applicant wishes to take up on this Application are the same ones he took up on the appeal and a Judge of the High Court made specific findings thereon. He cannot re-litigate the same issue before this Court. Neither can he seek a review of the findings of the Judge of the High Court in the self-same High Court.

8. As reproduced above, the Learned Judge specifically addressed the question of sentence and whether the minimum sentence was deserved in the circumstances of this case. He ruled that it was. While our decisional law now accepts that in specific circumstances a sentencing court might impose a sentence lower than the minimum sentence prescribed by statute, in this case, the High Court has pronounced itself on the appropriate sentence in the specific circumstances of the case. Consequently, the Applicant cannot approach the High Court again for a

review of the sentence. His only recourse is to file an appeal to the Court of Appeal.

9. Consequently, the undated Application/Petition herein is dismissed.

10. Orders accordingly.

Dated and delivered in Nakuru this 1st day of July, 2020

JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.