

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei – J

MISCELLANEOUS CRIMINAL APPL. NO. 57 OF 2020

TITUS MUSYOKA MUINDE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RESENTENSING

1. The Applicant herein **Titus Musyoka Muinde** was charged with defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act. After a full trial he was convicted and sentenced to serve life imprisonment.
2. The Applicant was aggrieved by the said conviction and sentence and he filed an appeal to the High Court against both the conviction and sentence. The appeal was duly heard. A judgment was delivered on 18.9.2018 by this court in which it affirmed the conviction and the sentence of the trial court.
3. The Applicant thereafter filed a notice of appeal with intention to appeal against the decision of the High Court to the Court of Appeal. In addition, he has now filed the present application in which he seeks review of sentence pursuant to the decision in **Evans Wanjala Wanyonyi (2019) eKLR**. In **S v. Ndlovu 2012 (1) ZLR 393** the Zambian High Court observed that sentencing must utilize an engendered approach and a constitutional and human rights perspective. From the import of the functus officio doctrine the applicant is not entitled to resentencing. Further, the matter is already in the Court of Appeal and handling the application on its merits would be tantamount to concurrent consideration of the matter and hence a disregard for the hierarchy of courts. Entertaining the application would be tantamount to this court sitting on appeal on a matter that has already been escalated to a higher court. The applicant having intimated his intention to appeal to the Court of Appeal should proceed to the said court where his appeal is pending consideration.
4. In the result the Applicant's application filed on 5.6.2020 is devoid of merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 7th day of July, 2020.

D.K.Kemei

Judge