



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

HIGH COURT MISC. CRIMINAL APPLICATION 193 OF 2018

ESM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant filed Notice of Motion on 5th July 2018 supported by his affidavit of the same date stating: -

a. **THAT**, I was charged with the offence of **INCEST** contrary to section 20(1) of the sexual offences act 3 of 2006 and was convicted and sentenced to life imprisonment at NAKURU Law Court.

b. **THAT**, I humbly make this application in regard to the above mentioned articles in reliance of article 165(3) (b) of the Constitution which empowers this Honourable court to handle application of this nature.

c. **THAT**, I am the applicant who has NOT exhausted all appeals in which **1st appeal HCCR APP NO 313 of 2010** by Hon Mshila (J).

d. **THAT**, I the applicant herein was not accorded fair trial of sentencing from the trial court to the last court of appeal thus contravening article 50(2)(q) of the Constitution while relying on the case of **DOUGLAS MUTHAURA NTORIBI MISC.APP. NO 4 OF 2015 at MERU HIGH COURT** and in the case of murder of **JOHN NGANGA GACHERU AND ANOTHER IN HCCR CASE NO 31/016 AT KIAMBU HIGH COURT**. And **WILLIAM OKUNGU VS REP 2018 ECLR CRIMINAL APPEAL NO 56/2013 COURT OF APPEAL KISUMU**.

e. **THAT**, I am the applicant herein further relying in the case of: - **FRANCIS KARIOKO MURUATETU AND ANOTHER VS REP (SUPREME COURT PETITION NO 15 OF 2015)** that mandatory **LIFE** penalty is unconstitutional thus seeking for appropriate sentence.

2. He was convicted of the offence of Incest Under Section 20(1) of the Sexual Offence Act on number 3 of 2006 and sentenced to 10 years' imprisonment. His appeal against conviction and sentence was dismissed on 19th March 2015.

3. He comes before this court under article 165 (3)(b) of the constitution seeking a rehearing of the sentence a kin to the **Francis Karioko Muruatetu and others v R** [2017] eKLR case.

4. He has not filed any appeal against this court's judgement.

5. The original sentence was meted on 15th October 2010.

6. Article 165 (3)(b) is about this court's jurisdiction to determine the Question whether a right in fundamental freedom is the Bill of rights has been denied, violated, infringed or threatened.

7. The appellant submissions are about his having reformed while in prison- his remorse for the offence he committed, his age- it is evident from the records that the appellant was sentenced to life for Incest Under Section 20(1) of the Sexual Offence Act.

8. This court confirmed the sentence. His rights under Article 50(2) (q) of the constitution have not been violated as it clearly states that an accused person has the right, if convicted to appeal to, or apply for review by a higher court as prescribed by Law.

9. This court having pronounced itself on his conviction and sentence – is not the higher court to review his sentence. It is prudent for the

appellant to file an appeal in the Court of Appeal.

10. The application is dismissed.

Dated, delivered and signed at Nakuru this 9th October 2020

Mumbua T. Matheka

Judge

In the presence of: VIA ZOOM

Court Assistant Edna

Applicant; present

For State: Ms. Rita