



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL MISCELLANEOUS APPLICATION NUMBER 150 OF 2019

STEPHEN KIPROTICH KOECH..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

R U L I N G

The applicant Stephen Kiprotich Koech was charged with defilement under section 8(1) as read with 8(2) of the Sexual Offences Act in Nakuru CMCR 137/2011. He was sentenced to life imprisonment. He filed HCRA 76/2012 which appeal was dismissed.

He then filed the undated Notice of Motion on 28/8/2019 seeking;-

“a rehearing of the sentence review”

His application is supported by his affidavit sworn on 8/3/2020.

He depones inter alia;

a. **THAT**, he makes this application in regard to Sexual Offences Act No 3 of 2006 Article 165 (3) (b) of the Constitution which empowers this Honourable court to handle application of this nature.

b. **THAT** he is the applicant who has NOT exhausted all appeals.

c. **THAT** he 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 **GUYO JARSO GUYO VS REP (PETITION NO 6 OF 2018 AT MARALAL HIGH COURT) AND FRANCIS KARIOKO MURUATETU VS REP (SUPREME COURT PETITION NO 15 OF 2015)** that mandatory life sentence is excessive in the circumstances and too harsh thus seeking appropriate sentence.

In his oral submissions the applicant stated that he had filed an appeal in the Court of Appeal but withdrew it and filed this application. He submitted that he had been served 9 years of life imprisonment sentence imposed on him by the subordinate court, and confirmed by this court. he pleaded with this court to release him and let him go home.

The state is opposed to his application- on the jurisdiction of this court to entertain the application. The applicant’s sentence by lower court was confirmed by this court hence his recourse is not before this court but before the Court of Appeal.

The issue is whether the application is merited.

This application raises similar issues as in the case of **Julius Mwangi Kamau vs Rep Misc. Criminal Application No 24/2020 (NAKURU)** where I found that this court could not review its own judgment under Article 50(2)(q) of the constitution.

The applicant’s recourse lies in “the higher court” prescribed by law – which is the Court of Appeal.

The application is dismissed.

Dated Delivered and signed at Nakuru this 9th October 2020

Mumbua T Matheka

Judge

In the Presence of: Via Zoom

Edna CA

For State; Ms. Rita

Applicant; Present