

REPUBLIC OF KENYA

CORAM: D.S MAJANJA J.

IN THE HIGH COURT OF KENYA

AT KISII

MISC. CRIMINAL APPLICATION NO. 17 OF 2019

CHARLES NYABOE ONJANGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The applicant, CHARLES NYABOE ONJANGU, was charged and convicted for the offence of defilement contrary to section 8(1) and (3) of the Sexual offences Act in Keroka SRM Criminal Case No. 990 of 2008. He was sentenced to 20 years imprisonment. His first and only appeal; KISII HCCRA No. 55 of 2009 was dismissed.
2. He now seeks resentencing based on the decision of the Supreme Court in **Francis Karioko Muruatetu & Another v. Republic [2017]eKLR** where the Supreme Court declared the mandatory death sentence unconstitutional.
3. As the applicant was sentenced to 20 years imprisonment under the Sexual Offences Act, this court has no jurisdiction to review the sentence or resentence the applicant where his sentence has in fact been affirmed by this court executing its appellate jurisdiction. The sentence under the Sexual Offences Act is not contemplated for review under the **Francis Karioko Muruatetu** decision.
4. I am constrained to dismiss the application and it is hereby dismissed.

Dated and delivered at Kisii this 4th day of April, 2019.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Applicant in person.