



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 32 OF 2018

**IN THE MATTER OF: CONSTITUTIONAL PETITION UNDER ARTICLE 19, 20, 21 (1) (4), 22 (3) (C) OF THE
CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF: ARTICLES 24, 25, 27, 28, 35, 48, 50(2) (Q), 258 AND 259 OF THE CONSTITUTION

AND

**IN THE MATTER OF: SECTION 8(2), 36 OF THE SEXUAL OFFENCES ACT AND SECTION 109 OF THE EVIDENCE ACT
AND SECTION 144 AS READ WITH SECTION 150 OF THE CPC**

AND

**IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF INDIVIDUAL AND ARTICLE
50(2) (Q) AND 22(3)(A) OF THE CONSTITUTION**

BETWEEN

MWAMLONGO CHICHORO MWANEMBE.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner filed a petition herein on 15th March, 2018 requesting for a case review and resentencing under Article 50(2) of the constitution. The Petitioner was charged with defilement of a child contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006. He was convicted and sentenced to serve 25 years in prison. He appealed. The Court of Appeal dismissed his appeal but enhanced the sentence to life imprisonment.

2. With the current petition the Petitioner is seeking a lenient sentence based on the facts of Muruatetu case.

3. The Director of Public Prosecution has opposed the petition on the grounds that the said Muruatetu case did not address the issue of life imprisonment. The court directed that Parliament should enact an Act to determine what amount of life imprisonment. Ms. Ogega for the Director of Public Prosecution submitted that the life sentence meted herein to the Petitioner is still good, and that the Petitioner should wait for guidelines to be prepared by Parliament on what constitutes life sentence.

Determination

4. I have considered the petition and submissions of parties. The Petitioner is serving life sentence. Life sentence currently means that the Petitioner will live his entire life in jail. Following the said Muruatetu case the Supreme Court directed Parliament to address what constitutes life imprisonment for various cadres of prisoners, considering their age, progress in prison, health, etc. and so on. It has been submitted authoritatively that the Attorney General has since constituted a thirteen (13) member Task Force to come up with a clear

framework of what constitutes life sentence. Once that is done the Petitioner can come back to court for a review. As at now the minimum sentence under the offence committed is life sentence. The prisoner has been in prison for eight (8) years since he was arrested, and five (5) years since he was convicted.

5. It is the finding of this court that it lacks the jurisdiction and mandate to interfere with the said life sentence. This petition is a little premature. The Petitioner should come for a review after the aforesaid Task Force has made its recommendation and Parliament has acted on the same.

6. For those reasons the petition herein is dismissed.

Dated, Signed and Delivered in Mombasa this 4th day of April, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Isaboke for DPP

Petitioner in person

Mr. Kaunda Court Assistant