



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**PETITION NO.16 OF 2019**

**(CORAM: CHERERE- J.)**

**BETWEEN**

**MATHEWS GWAKO ONGERE.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. **MATHEWS GWAKO ONGERE**, (hereinafter referred to as the petitioner) was charged with the offence of defilement contrary to Section 8(1) (3) and incest contrary to Section (20) (1) of the **Sexual Offences Act No. 3 of 2006**. He was convicted and sentenced to 20 years and life imprisonment respectively with the sentence of 20 years being subsumed in the life sentence.
2. By a petition filed on 6<sup>th</sup> March, 2019, the petitioner has petitioned this court for resentencing.
3. Mr. Muia, learned counsel for the state opposed the petition on the ground that the Petitioner does not qualify for resentence.

**Analysis and Determination**

4. The Supreme Court decision in ***Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR*** declaring the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.
5. The Petitioner was not sentenced to death but to life imprisonment. As was rightfully submitted by the Mr. Muia for the state, the Petitioner does not qualify for resentence.
6. Consequently, the Petition filed on 6<sup>th</sup> March, 2019 is considered and found to have no merit and it is dismissed.

**DATED AND SIGNED IN KISUMU THIS 16<sup>th</sup> DAY OF May 2019**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant** - Felix

**Petitioner** - Present in person

**For the State** - Ms Gatho