



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**PETITION NO.69 OF 2018**

**CORAM: CHERERE- J.**

**BETWEEN**

**HELISHA OYOO OYUGI.....PETITIONER**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. **HELISHA OYOO OYUGI**, (hereinafter referred to as the petitioner) was convicted and sentenced to 20 years imprisonment for the offence of Defilement contrary to section 8!) as read with section 8(3) of the Sexual Offences Act. He appealed in **Kisumu High Court Criminal Appeal No. 125 of 2010** which were dismissed and the conviction and sentence were upheld. He subsequently appealed to the Court of Appeal in **Kisumu Criminal Appeal No.342 of 2011**. The Court of Appeal similarly upheld his conviction and sentence.

2. By a petition filed on 12th July, 2018, the petitioner has petitioned this court for resentencing citing his long period spent in custody.

3. Mr. Muia learned counsel for the state submitted that the court has no jurisdiction to review the sentence as sought by the petitioner.

**Analysis and Determination**

4. The Supreme Court decision in ***Francis Kariuki Muruatetu & Another v Republic & 5 others [2016] eKLR*** that declared the mandatory death sentence unconstitutional has necessitated resentencing of all persons previously sentenced to the mandatory death sentence.

5. The petitioner herein was not sentenced to death and is unfortunately therefore not eligible for resentence.

6. Consequently, the Petition is found to have no merit and it is dismissed

**DATED AND SIGNED IN KISUMU THIS 1st DAY OF November 2018**

**T. W. CHERERE**

**JUDGE**

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

**Court Assistant** - Felix

**Petitioner** - Present in person

**For the State** - Mr. Muia