



**REPUBLIC OF KENYA**

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

**CRIMINAL MISC. APPLICATION NO. 17 OF 2018**

**MUTHUI MWANGANGI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. **Muthui Mwangangi**, the Applicant, was arraigned before **Senior Resident Magistrate, Mwingi, Hon. H.M. Nyambergi** on the **9<sup>th</sup> February 2009** where he was charged with the offence of **defilement** Contrary to **Section 8 (1)** as read with **Section 8(2)** of the **Sexual Offences Act**. On the **12<sup>th</sup> day of May 2011** he was **convicted** and sentenced to **life imprisonment**.

2. Aggrieved by the sentence and conviction he appealed to the High Court. On the **5<sup>th</sup> day of October 2012 Asike Makhandia Judge** (*As he then was*) dismissed the Appeal in its entirety.

3. Being dissatisfied with the decision of the High Court, the Applicant appealed to the **Court of Appeal of Kenya** which affirmed the judgment of the High Court.

4. Now he has approached this court by way of Notice of Motion seeking reduction and/or review of the sentence and possibly to be set at liberty. The application is premised on grounds that: he has now **served three (3) years imprisonment** and in the process undergone several trainings under the prisons reform and rehabilitation of program and with the experience acquired he will help in nation building.

5. The Applicant canvassed the appeal through written submissions. He urged that in addition to his application he was seeking inclusion of the complainant, his granddaughter in the matter to be reconciled with him to enable him take full responsibility of the family. That this would not be prejudicial, as she had visited him in prison which was pursuant to Article 159 (2) (c) of the constitution.

6. The state through learned State Counsel, **Mr. Mamba** opposed the application on the grounds that the Applicant is serving life imprisonment and parliament is yet to come up with guidelines.

7. I have considered the application by the Applicant and the response thereto by the state.

8. The Application is based on **Article 159 (2)** of the Constitution, 2010 that provides thus:

***“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—***

***(a) justice shall be done to all, irrespective of status;***

***(b) justice shall not be delayed;***

***(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);***

***(d) justice shall be administered without undue regard to procedural technicalities; and***

***(e) the purpose and principles of this Constitution shall be protected and promoted.”***

9. It is not in doubt that courts are guided by some principles that they should uphold while exercising judicial authority and these include promotion of reconciliation. However, circumstances of each matter should be taken into consideration and the timing of the application too.

10. This is a matter that was in the Magistrate's court at the first instance. The Applicant exercised his right of appeal to the High Court which considered the matter and confirmed the decision of the lower court. Following his dissatisfaction the Applicant appealed to the Court of Appeal which was of the same view, therefore affirming both decisions of the two (2) lower courts to it.

11. After the High Court delivered its judgment it had finally disposed off the matter. It had become *functus officio*. In the case of *Chandler V. Alberta Association of Architects (1989) 2 S.C.R. 848*, it was stated that:

**“The general rule is that a final decision of a court cannot be re-opened”**

This means that when the High Court delivered its judgment it had finally disposed of the matter. It became *functus officio*. In the absence of statutory authority this court cannot re-open the matter that was determined by the Superior Court.

12. In the circumstances allowing such an application would be a miscarriage of justice.

13. In the result the **Application is dismissed.**

14. It is so ordered.

**Dated, signed and delivered at Kitui this 12<sup>th</sup> day of November, 2018.**

**L.N. MUTENDE**

**JUDGE**