

RULING
HCCRMISCAPPL E006 OF 2026



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCCRMISCAPPL E006 OF 2026

BETWEEN
JOSEPHAT ONSONGO
BUNDUKI.....APPLICANT
AND
REPUBLIC.....
.....RESPONDENT

RULING

1. The Applicant was charged before the Chief Magistrate's Court at Nyamira with the offence of rape contrary to section 3(1) of the Sexual Offences Act, No. 3 of 2006. Upon conviction, he was sentenced to twenty (20) years' imprisonment.
2. Section 3(3) of the Sexual Offences Act provides that a person convicted of rape is liable to imprisonment for a term of not less than ten (10) years but which may be enhanced to imprisonment for life. The statutory minimum sentence is therefore ten years, with discretion to enhance up to life imprisonment.
3. The Applicant appealed to this Court in HCCRA E018 of 2023. The appeal was heard and dismissed, and both conviction and sentence were upheld.

4. In the present application, the Applicant seeks reduction of sentence to the statutory minimum, relying on Article 50(2) of the Constitution, the Sentencing Policy Guidelines, 2023.
5. It is, however, settled by the Supreme Court in **Francis Karioko Muruatetu & Another v Republic; Katiba Institute & 5 Others (Amicus Curiae) [2021] eKLR** (commonly referred to as *Muruatetu II*) that the decision in *Muruatetu I* applies strictly to the mandatory death sentence under section 204 of the Penal Code. The Supreme Court expressly clarified that its earlier decision did not invalidate mandatory or minimum sentences prescribed under other statutes, including the Sexual Offences Act.
6. To the extent that decisions such as and decisions including **Dismas Wafula Kilwake v Republic (2018) eKLR, Christopher Ochieng v Republic (2018) eKLR, Jared Koita Injiri v Republic, Cr. App. No. 93 of 2014 (Kisumu)** and **Kenneth Kaimi v Republic (2021) eKLR** extended the reasoning in *Muruatetu I* to minimum sentences under the Sexual Offences Act, that line of authority was overtaken by the Supreme Court's clarification in *Muruatetu II*. This Court is bound by the Supreme Court under Article 163(7) of the Constitution.

RULING
HCCRMISCAPPL E006 OF 2026

7. In any event, the determinative issue before this Court is jurisdiction. Having heard and determined HCCRA E018 of 2023 and affirmed the sentence of twenty (20) years' imprisonment, this Court became functus officio in respect of that judgment.
8. The doctrine of *functus officio* bars a court from reopening or altering its final decision except as provided by law. A court cannot sit on appeal over its own judgment.
9. The present application, in substance, invites this Court to reconsider and vary a sentence it has already upheld on appeal. This Court lacks jurisdiction to do so.
10. If the Applicant remains aggrieved by the appellate judgment, his recourse lies before the Court of Appeal and not before this Court.
11. Accordingly, the Notice of Motion dated 27th January 2026 is hereby struck out for want of jurisdiction.

DELIVERED AT NYAMIRA THIS 11th DAY OF
February 2026



WAMAE.T. W. CHERERE
JUDGE

Appearances

RULING
HCCRMISCAPPL E006 OF 2026

Court Assistant - Anita

Applicant - Present

For the DPP - Mr. Chirchir (SADPP)