



REPUBLIC OF KENYA



**Simiti v Republic (Criminal Petition E03 of 2023)  
[2024] KEHC 758 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 758 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL PETITION E03 OF 2023**

**DK KEMEL, J**

**JANUARY 31, 2024**

**BETWEEN**

**TIBERIUS WANYONYI SIMITI ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner herein Tiberius Wanyonyi Simiti filed the present Petition seeking re- sentencing in respect of Sirisia PM CR. NO. 1113 OF 2016. His case is that he was convicted and sentenced to twenty ( 20 ) years imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*. He later lodged an appeal at Bungoma High Court vide HCRA NO. 209 of 2018. He has averred that pursuant to the Supreme Court decision in *Francis Karioko Muruatetu & 2 Others v R* [2017] eKLR and the decision of Odunga J ( as he then was ) in Machakos Petition No. E017 of 2021, he is entitled to a sentence review. He further averred that he has since reformed while in prison and has acquired several skills.
2. Miss Mwaniki for the Respondent opposed the application. She submitted that the Petitioner had lodged an appeal vide Bungoma HCRA NO. 209 OF 2016 which was dismissed and hence this court is already functus officio. She sought for the dismissal of the application.
3. I have considered the application as well as the submissions presented. It is not in dispute that the petitioner’s appeal was dismissed by this court on 18.12.2018. There is no evidence that the Petitioner has lodged an appeal to the Court of Appeal. Be that as it may, it is my considered view that this court lacks jurisdiction to entertain the matter in view of the fact that a court of similar jurisdiction heard the Petitioner’s appeal and dismissed it. The directions given on 6.7.2023 by the Supreme Court in the case of *Francis Karioko Muruatetu and 2 Others v R* [2017] eKLR was that the said decisional law is not an authority to declare minimum sentences as unconstitutional . Its application was limited to murder cases falling within its scope. Therefore, the Petitioner’s case being one of defilement, the request for



review of sentence on the basis of the *Muruatetu case* (supra) is without merit. The Petitioner's appeal having been determined by this court ought to move to the Court of Appeal for redress as this court has become functus officio.

4. In view of the foregoing observations, it is my finding that the petition lacks merit. The same is dismissed.

**DATED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JANUARY 2024**

**D. KEMEI**

**JUDGE**

In the presence of:-

Tiberious Wanyonyi Simiti Petitioner

Miss Kibet For Respondent

Kizito Court Assistant

