



REPUBLIC OF KENYA



**Wafula v Republic (Criminal Petition 1 of 2023)  
[2024] KEHC 679 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 679 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL PETITION 1 OF 2023**

**DK KEMEL, J**

**JANUARY 31, 2024**

**BETWEEN**

**PAUL WEKESA WAFULA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner herein Paul Wekesa Wafula filed the present Petition seeking for re-sentencing in respect of Bungoma Chief Magistrate's court Sexual Offence Case No. 474 of 2016 Republic – Vs- Paul Wekesa Wafula. His case is that he was convicted and sentenced to twenty (20) years' imprisonment. He later lodged an appeal at Bungoma High Court vide HCRA No. 61 of 2020 wherein the sentence was reduced to 14 years imprisonment. He has averred that following the decision of *Francis Karioko Muruatetu & 2 Others -vs- Republic* (2017) eKLR by the Supreme Court, several decisions have been made by the High Courts and more particularly by G.V Odunga J ( as he then was ) and Mativo J ( as he then was ) in Machakos Petition Number E017 of 2021 and Mombasa Petition No. 97 of 2021 respectively where they held that judicial officers should exercise discretion in sentencing in matters of sexual offences by weighing up the circumstances of each individualized and isolated case and come up with independent findings and sentences that are reasonable, commensurate and proportionate to such circumstances as along as they would not cause an injustice in any way. It is further his case that he is entitled to a sentence review and 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 this court is functus officious since the Petitioner had lodged an appeal to this court vide HCRA No. 61 of 2020 wherein the sentence was reduced from twenty years to fourteen years imprisonment. It was submitted that this court cannot proceed with the matter again as it will amount to sitting on appeal on its judgment.



3. I have given due consideration to the application and submissions presented. it is not in dispute that the Petitioner's appeal was determined by this court vide Bungoma HCRA No. 61 of 2020 wherein the sentence was reduced from 20 to 14 years' imprisonment. 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 this matter in view of the fact that a court of similar jurisdiction heard the Petitioner's appeal and reduced the sentence from 20 to 14 years' imprisonment. The directions given on 6.7.2021 by the Supreme court in *Francis Karioko Muruatetu & 2 Others – vs- Republic* ( 2017) eKLR was that the said decisional law is not an authority to declare minimum sentences as unconstitutional and that its application was limited to murder cases falling within its scope. Hence, the petitioner's case being one of defilement, the request for review 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. The petitioner's reliance on the petitions determined by Odunga J ( as he then was) and Mativo J ( as he then was) is not helpful as the said cases were decided by courts of similar jurisdiction and are not binding to this court. It is instructive that this court has already determined the petitioner's appeal and reduced the sentence. The Petitioner should now move to the Court of Appeal for redress since that court has powers to interfere with both conviction and sentence.
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 31<sup>ST</sup> DAY OF JANUARY, 2024**

**D KEMEI,**

**JUDGE**

In the presence of :-

Paul Wekesa Wafula Petitioner

Miss Kibet for Respondent

Kizito Court Assistant

