



**Pushen v Republic (Constitutional Petition E003 of 2023)
[2024] KEHC 1790 (KLR) (28 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CONSTITUTIONAL PETITION E003 OF 2023
AC MRIMA, J
FEBRUARY 28, 2024**

BETWEEN

JULIUS PUSHEN PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner herein, Julius Pushen, was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#), No. 3 of 2006. He also faced an alternative charge of committing an indecent act with a Child contrary to Section 11(1) of the [Sexual Offences Act](#), No. 3 of 2006.
2. He denied the offences and a trial was held where he was found guilty of the offence of defilement, convicted and sentenced to a term of 20 years in prison.
3. The Petitioner appealed against both the conviction and sentence to the High Court. That was in Criminal Appeal No. 8 of 2016. The appeal was, however, wholly dismissed.
4. Thereafter, the Petitioner filed several sentence review applications without any success.
5. The Petitioner eventually filed Petition No. E016 of 2022 which was allowed on October 13, 2022 in the following terms: -
 - a. Petition is allowed to the extent of setting aside the sentence imposed on 13/04/2016.
 - b. The Petitioner to be re-sentenced by the trial Court.
 - c. A Pre-Sentence Report be availed before the trial Court.
 - d. File be marked as closed.



- e. The Petitioner to be held at the GK Prison awaiting for re-sentencing.
6. I have perused the trial Court file and it seems that the Petitioner is yet to be re-sentenced. That could have been the reason he filed the instant similar Petition seeking the very orders that were granted on October 13, 2022.
7. As such, this Petition is a non-starter as it seeks orders which were long granted.
8. Deriving from the above, the following final orders of this Court do hereby issue:
 - a. The Petition is hereby struck out since the prayers sought were granted in Petition No. E016 of 2022 on October 13, 2022.
 - b. The Appellant shall be re-sentenced by the trial Court.
 - c. A Pre-Sentence Report be availed before the trial Court.
 - d. The Hon. Deputy Registrar of this Court to transmit the trial Court file, a copy of this judgment and the orders made in Petition No. E016 of 2022 on 13th October, 2022 to the trial Court forthwith.
 - e. This file is hereby marked as Closed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 28TH DAY OF FEBRUARY, 2024.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Julius Pushen, the Petitioner in person.

Mr. Momanyi, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Chemosop/Duke – Court Assistants.

