



**Ombijo v Republic (Criminal Petition E003 of 2024)
[2024] KEHC 8040 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8040 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E003 OF 2024
RE ABURILI, J
JUNE 28, 2024**

BETWEEN

COLLINS OUMA OMBIJO PETITIONER

AND

REPUBLIC RESPONDENT

***(From original conviction and sentence in Winam Senior Principal
Magistrate Criminal Sexual Offences Case No. 10 of 2018)***

RULING

1. The Applicant/Petitioner Collins Ouma Ombijo was convicted *vide* Winam SPM Sexual Offences Case No. 20 of 2018 for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* and was sentenced to serve 20 years imprisonment, the Mandatory minimum.
2. He appealed *vide* HCCRA No. E011 of 2020 which appeal was dismissed. He petitioned for sentence review *vide* Petition No. E029 of 2022, which was dismissed on 24th March 2023 as he never annexed any court proceedings from the lower court or on appeal.
3. He has now filed a fresh Petition for resentencing.
4. I have perused his trial court record which is partial and the authorities that he has annexed including the *Francis Muruatetu & another v Republic* [2017] eKLR case from the Supreme Court where it was held that Mandatory death sentence is unconstitutional in so far as it deprives the trial court of the discretion in sentencing and the accused person's right to mitigate is also curtailed. The Supreme Court however did not outlaw death sentence which remains lawful and constitutional and therefore the trial court may impose death sentence where circumstances warrant the same.
5. In this case, the trial court considered the mitigations, Probation Officer's report and the fact that the accused was a first offender and nature of the offence, before sentencing him to serve 20 years



imprisonment and stating correctly so, that the law provides for such sentence. I find no fault in that pronouncement by the trial court, as the sentence was lawful.

6. The applicant herein has not provided any mitigating circumstances in his application that would persuade this court to reduce the lawful sentence imposed. He is simply focussing on the unconstitutionality of the sentence imposed which I find cannot guarantee him a resentencing to a less severe sentence, even applying the principles set out in the Francis Muruatetu case and the subsequent 2022 clarification by the Supreme Court that Muruatetu one only applied to murder cases.
7. There is no remorse on the part of the convict, having committed a heinous offence against the minor. He makes no apologies for committing such an offence. He has not demonstrated that he has reformed to warrant sentence reduction. He is asking for non-custodial sentence but he does not justify that kind of lenient sentence noting that he has selectively availed the trial court proceedings, omitting the evidence adduced against him.
8. I find this application not merited. It is hereby dismissed.
9. Signal to issue.
10. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF JUNE, 2024.

R. E. ABURILI

.....

JUDGE

