



**Abdille v Republic (Miscellaneous Criminal Case E014 of 2020)
[2022] KEHC 11847 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 11847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL CASE E014 OF 2020**

**A ALI-ARONI, J
JUNE 23, 2022**

BETWEEN

ADEN KALIL ABDILLE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was initially charged with the offence of rape contrary to section 3 (1) (a) (b) and 3 of the *Sexual Offences Act*. After a full trial he was convicted and sentenced to 20 years' imprisonment.
2. The applicant being dissatisfied with the judgement preferred an appeal to this court being Appeal No 26 of 2016 which appeal was found lacking in merit and dismissed.
3. The applicant has returned to this court asking for re-sentencing and mainly relying on the now famous case of *Francis Karioko Muruatetu & others versus the A.G* Supreme Court Petition No 15 of 2015. In his affidavit in support of the application he also seeks consideration of his sentence based on Section 333 (2) of the *Criminal Procedure Code*.
4. In its advisory opinion on the *Francis Karioko Muruatetu & Another Vs the Attorney General (Supra)* the Supreme Court is clear that the decision is only applicable to murder trials and not any other offence, certainly not offences based on the *Sexual Offences Act*. This application having been made in reference to the Muruatetu Case is misplaced.
5. Recently the High court in Machakos in the case of *Philip Mueke Maingi & 5 others Versus Director of Public Prosecution & Another*, (2022) eKLR had the occasion to consider and determine a Constitution Petition filed pursuant to the directives of the Supreme court in Muratetu 2 citing contravention of the *Constitution* in imposing sentences based on minimum –maximum principle under the *Sexual Offences Act* 2006. The Said petition was akin to the Muruatetu petition and but this time in relation



to sections of the *Sexual Offences Act*. Odunga J was of a similar opinion as the Supreme court that the concept of minimum –maximum sentences in statute limits the discretion of a court in sentencing based on the circumstances of a case, as the sentences are pre-determined in a blanket manner and purport to take away from the court its statutory mandate of sentencing. He did not however find fault with the prescribed sentences per se.

6. This court has considered the facts of the case, the evidence before it, the aggravating and mitigating factors and has arrived at the opinion that the facts, and evidence before it including the age of the victim who was only 19 at the time of the commission of the offence, and the fact that action of the applicant was not only beastly, brutal and inhuman, it must have been devastating to the victim, dehumanizing and degrading to her dignity and must have left her with a permanent emotional scar and therefore the 20 years jail term imposed on the Applicant is by no feat excessive so as to require revision.
7. As relates to consideration for the time spent in custody, the court record indicates that the applicant was arraigned in court on March 7, 2014 and judgement delivered on April 1, 2014 a record three weeks. And though in the judgement the trial court did not mention consideration of the three weeks the trial court gave a maximum sentence after mitigation and observation that the offence was rampant and for the reasons stated above this court is of the view that the time spent in custody was negligible.
8. In the end the court finds the application lacking in merit and the same is hereby dismissed.

DELIVERED AND SIGNED AT GARISSA THIS 23rd JUNE, 2022.

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ALI-ARONI

JUDGE

