



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 162 OF 2019

MBT.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **MBT** was charged and convicted for the offence of incest contrary to Section 20 (1) of the Sexual Offences Act and was sentenced to serve life imprisonment. He has exhausted his appellate avenues and is now in this Court for resentencing in light of the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the apex court found that the mandatory nature of the death sentence is unconstitutional. In that case also, the apex court indicated that a trial court may be in a position to determine what amounts to life imprisonment.
2. The Petitioner was convicted on the proved facts that on 6/3/2012 at [particulars withheld], Kisauni within the Coast Province he caused his penis to penetrate the vagina of XXX knowing that she was his daughter aged 5 years. The Petitioner was living with his daughter born in 2007 after his wife was taken away by her parents for non-payment of dowry.
3. The first issue here is whether this Court can interfere with the sentence of life imprisonment imposed upon the Petitioner by the trial court. The prosecution did not address this issue but only submitted that I should not interfere with the sentence given by the trial court.
4. The Petitioner on his part submitted that he has reformed and that he regretted the offence and he prayed for mercy and leniency. He submitted that a jail term of 10 years would be adequate punishment and that he had already served 9 years in jail.
5. In my view, and pursuant to the Supreme Court in the aforesaid **Muruatetu** case, this Court has the jurisdiction to revisit all sentences which were meted pursuant to the mandatory nature of the enabling law. Further, and in the same spirit of **Muruatetu**, this Court has the jurisdiction to determine what amounts to life imprisonment. For these reasons this Court has the jurisdiction to interfere with the sentence meted out in the trial court.
6. The issue then is to what extent can that be done. It is not in doubt that the crime committed by the Petitioner was a grave one, against a girl of 5 years, and his own daughter. This is a crime not only against the young soul, but also against the public interest, and must be punished adequately. Indeed, the punishment must reflect the life imprisonment which was imposed by the trial court, and which was confirmed in appeal. Even though this Court can interfere with the life sentence, the sentence meted out herein must match the crime.
7. The Petitioner prays for a jail term of 10 years including the 9 years already served in prison. The Petitioner further submits that the remaining years be committed to community service.
8. In my view, the Petitioner does not appear to understand the gravity of the offence he committed, and he is taking lightly the sentencing process. I am satisfied that the Petitioner should be jailed to a term in prison of 27 years from the date of conviction.
9. Pursuant to above I hereby set aside the life imprisonment imposed on the Petitioner by the trial court. In place thereof I herewith jail the Petitioner for a term of Twenty Seven (27) years from the date of conviction.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 26th day of January, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person via video link

Mr. Fedha for DPP

Ms. Peris Court Assistant