



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

HCCRMISC. APPLICATION NO. 88 OF 2019

MWANGANGI MATEI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Before court is an application brought by **Mwangangi Matei** undated but has the year 2019 on it.
2. The application is brought pursuant to Articles 22 and 258 (2)(c) and 165(3) (d) (ii) of the Constitution 2010.
3. The Applicant seeks to have the court consider the time he served in remand as sufficient sentence and acquit him.
4. In his written submissions the Applicant has referred the court to **Petition No. 15 as consolidated with Petition No. 16 of 2015 Francis Karioko Muruatetu & Another vs Republic**. He urged the court to consider the said authority and deem it fit to reconsider sentencing in his case.
5. In making his submissions he further informed the court that he filed Misc. Application 84 of 2016 where the life imprisonment meted out to him was set aside and the matter referred to the lower court for resentencing.
6. On its part the State objects to the application and urges that the Applicant has been in court severally as follows; –
 - In Garissa High Court Criminal Case No. 4 of 2018 where he appealed the trial court's decision and the appeal was dismissed.
 - **Criminal Misc. Application No. 38 of 2018** after the **Muruatetu case** where the sentence was set aside and matter was referred to the lower court for resentencing and where he was sentenced to 20 years imprisonment term on the 15th of July 2019.
7. According to the State this application is an interference with the trial court's re-sentencing yet the sentence meted out by the trial court is lenient and ought not to be interfered with.
8. The State argued further that the earlier sentence of life imprisonment was indeed within the law and the re-sentencing of 20 years was reasonable hence the application should be dismissed.
9. Having considered the application, the supporting affidavit, the entire record of the Applicant consisting of the history behind his 20 years imprisonment, submissions by the Applicant and the State and I must decry that prisoners are misusing the decision of the Supreme Court in the case of **Francis Karioko Muruatetu & Another vs Republic [2017] eKLR** by filing a myriad of unnecessary application which is certainly an abuse of court process.
10. I have since my transfer to this station come across various applications that cite the **Muruatetu case** out of context. The prisoners are out on a fishing expedition to try their luck. In this case in particular I say so because the current Applicant filed Criminal Misc. Application No. 38 of 2018 and in his petition, he cited the **Muruatetu case** seeking for re-sentencing and on the 27th of June 2019, **Kariuki J** rendered his judgement setting aside the life imprisonment meted out to the Applicant by the trial court and he sent the file back to the trial court for re-sentencing.
11. The Applicant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act. The particulars thereof were that on the 17th October 2014 between 5:00 am and 11:00 am at [particulars withheld] in Bura Tana District within Tana River County did commit an act which caused penetration with his genital organ with JC a girl aged 4 years.

12. Both the trial court and the High Court found the Applicant guilty of defiling a minor aged 4 years. The Applicant seems satisfied with the conviction is not content with the 20 years that replaced the life imprisonment and wants a further reduction. Having decried the unnecessary application I must say that I wholly agree with the State that the 20 years re-sentencing is most lenient.

13. I indeed share the sentiments and I am guided by the most recent Court of Appeal decision of **Abdinasir Guhad Bore vs Republic Criminal Appeal No. 1 of 2014** a decision read on 24th July 2020 where extract from the same state as follows;

“The main objective of the enactment of Sexual Offences Act in 2006 is expressed in its long title as the prevention and protection of all persons from harm and unlawful sexual acts. Defilement, as form of sexual violence against children is a debilitating experience for the victimized children. Its impact on the victims is detrimental to the psychological, social, educational and physical health outcomes, not only of the affected children but also their families and society at large.”

Further

“Sentencing is also discretionary, following the decision in Francis Karioko Muruatetu (supra) that declared any law that deprives the court of the exercise of judicial discretion by providing mandatory sentencing as “harsh, unjust and unfair. The mandatory nature deprives the court of their legitimate jurisdiction to exercise discretion not to impose” the mandatory sentence in appropriate cases.”

14. It is noteworthy to note that the **Abdinasir Guhad Bore case (supra)** is on all fours similar with the case before court. The Court of Appeal refused to interfere with life imprisonment having expressed themselves in the manner quoted above.

15. The court is of the view that the Applicant must consider himself lucky that this court manned by **Kariuki J** set aside the life imprisonment and on re-sentencing the trial court meted on him 20 years.

16. Apart from stating once more that I fully agree and am guided by the decision of the Court of Appeal I find no merit whatsoever in the application and the same having been found to be an abuse of court process it is dismissed for lack of merit.

DELIVERED AND SIGNED AT GARISSA THIS 11th DAY OF FEBRUARY, 2021.

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ALI ARONI

JUDGE