

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO.186 OF 2019

SAID BAKARI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein was arraigned before the **Kwale Senior Principal Magistrate's Court in Criminal Case No. 892 of 2015** on a charge of defilement. The Petitioner entered a plea of 'guilty' and the learned Trial Magistrate convicted him and sentences him to serve 15 years in prison.

2. The Petitioner is seeking a re-sentence in the instant Petition pursuant to the Supreme Court's decision in the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**, wherein the apex Court decided that a mandatory death sentence is against the Constitution.

3. In his submissions the Petitioner prayed for reduction of sentence on the basis that it was a mandatory sentence. He submitted that he does not have parents and that the victim has since been married. He was 25 when he committed the offence.

4. On her part, **Ms. Wanjohi** the learned prosecutor submitted that this Court should not interfere with the trial court sentence of 15 years.

5. According to **Section 8(4) of the Sexual Offences Act No.3 of 2006**: -

"A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years".

6. Clearly, the sentence imposed on the Petitioner was mandatory sentence which this Court can interfere with.

7. The Petitioner was 25 years when he committed the offence. He was a pretty young man. He has learnt his lesson and now shuns crime. Having now considered the Petitioner's mitigation, I hereby set aside the sentence of 15 years imposed on the Petitioner. In place thereof I substitute a jail sentence of nine (9) years from the date of arrest.

Dated, Signed and Delivered at Mombasa this 28th day of June, 2021.

E. K. OGOLA

JUDGE

Ruling delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant