



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

MISC. APPLICATION NO. 23 OF 2020

NOOR KORANE HASSAN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. On the 4th of June, 2020, the Applicant Noor Korane Hassan moved this court by way of a chamber summons seeking for resentencing of his 20 years jail term based on the decision of **Francis Karioko Muruatetu & Another Petition No. 15 of 16 and Evans Wanjala Wanyonyi C.A Criminal Appeal No. 312 of 2018 (Eldoret).**

2. Submissions filed by the Applicant referred to an appeal yet his appeal had earlier on been dispensed with. He therefore opted to submit orally on the application subject of this ruling. He urged that the sentence meted out of 20 years was harsh, his mother is blind and unwell and he wishes to assist her.

3. The application was objected to by the State which maintained that the sentence is within the law.

4. The Appellant was initially charged with the offence of defilement contrary to Section 8 (1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006 (The Act).

The particulars thereof were that on the 8th of January 2016, at [Particulars Withheld] in Garissa Township he caused his penis to penetrate the genital organ of MA a child of 12 years.

5. The Applicant faced an alternative count of indecent assault contrary to Section 11(1) of the Act.

6. The matter proceeded to full trial, the Applicant found guilty of the 1st count and sentenced to 20 years imprisonment.

7. Dissatisfied with the conviction and sentence, the Applicant appealed to this court and in a judgment dated the 23rd of September, 2019 the appeal was dismissed for lack of merit.

8. To start with, this court though differently constituted already dealt with the matter and found the conviction and sentence safe therefore dismissing the appeal. This court cannot therefore sit on appeal on a decision of a court of concurrent jurisdiction.

9. Secondly, the Supreme Court in its recent directions on the **Francis Karioko Muruatetu Case Supra** dated the 6th of July 2021 pronounced thus;

“10 It has been argued in justifying this state of affairs, that, by paragraph 48 of the judgement in this matter, or indeed the spirit of judgment as a whole, the court has outlawed all mandatory and minimum sentence provisions; and that although Muruatetu specifically dealt with mandatory death sentences in respect of murder, the decision’s expansive reasoning can be applied to other offences that prescribe mandatory or minimum sentences far from it. In that paragraph, we stated categorically that;

“(48) Section 204 of the Penal Code deprives the court of the use of Judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Articles 25 of the Constitution, an absolute right.”

11. A reading of the above paragraph and the judgement as a whole, at no point is reference made to any provision of any other statute. The reference through the judgement is only made to Section 204 of the Penal Code and it is the mandatory nature of death sentence under that Section that was said to deprive the “courts of their legitimate jurisdiction to exercise discretion nor to impose the death sentence in appropriate cases”.

12. This court has quoted the Supreme Court’s directions at length to emphasize that offences such as the one the applicant faced do not qualify for resentencing. The Appellant exhausted his chance on Appeal at the High Court and the Court is certainly *functus officio*.

13. The application is therefore declined.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF SEPTEMBER 2021.

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ALI- ARONI

JUDGE