

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPL. NO. 4 OF 2020

MOHAMED HASSAN MOHAMUD.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. On the 23rd of January 2020 the Applicant filed a Chamber Summons seeking to have his sentence revised pursuant to the Supreme Court decision in the case of **Francis Karioko Muruatetu & Others Petition No. 15 & 16 (consolidated) of 2015(Muruatetu decision)**.
2. The Applicant was charged in Criminal Case No. 225 of 2017 in SPM's Court in Wajir with the offence of rape contrary to Section 3(1) (a) (b) of the Sexual Offences Act No. 3 of 2006.
3. The particulars of the offence are that on the 21st of April 2017, at around 11 am at Harjaley Gunana Sub-Location, Tarbaj Sub-County within Wajir County he had carnal knowledge of BK without her consent.
4. He faced an alternative count of indecent assault contrary to Section 11(1) of the said Act.
5. The Applicant pleaded not guilty, he was convicted after trial and sentenced to 15 years imprisonment.
6. He appealed to this court in **High Court Criminal Appeal No. 6 of 2019**, the conviction was upheld but the appeal succeeded in as far as the sentence was set aside and its place, he was sentenced to 10 years imprisonment from the date of his arrest.
7. From the court record the Applicant through his counsel preferred an appeal to the Court of Appeal after this court delivered its judgement.
8. The State opposed this application on grounds that this court rendered its judgement and though the court was then differently constituted this court discharged its duty and cannot revisit the same.
9. From the onset, it is noteworthy that the Constitution did not outlaw the Sexual Offences Act. Secondly the case of **Muruatetu** according to the recent directions issued by the Supreme Court on the same, dated 6th July 2021, the said decision did not make refer to other statutes or sections of the law that provide for maximum and minimum sentences save for Section 204 of the Penal Code. Neither did the Supreme Court outlaw minimum and maximum sentences as the issue was not canvassed before them save as stated above.
10. Thirdly, as submitted by the State the issue of the sentence meted out to the Applicant was canvassed on appeal and where indeed the Applicant succeeded to have the same reduced.
11. Lastly, there is a pending appeal in the Court of Appeal where this issue can be canvassed if need be.
12. For the reasons above the application is declined. It stands dismissed.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 28th DAY OF OCTOBER, 2021.

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ALI-ARONI

JUDGE