

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. CRIMINAL APPLICATION NO. 104 OF 2019

JSK.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, **JSK**, was convicted of **Incest** contrary to **Section 20(1)** of the **Sexual Offences Act**. The trial court found as a fact that the prosecution had established, to the required standard of Proof, that the Applicant did on 5th September 2010 unlawfully caused his penis to penetrate the vagina of **SNJ**, a girl aged six (6) years, who to his knowledge was his daughter. The Applicant was sentenced to serve Fifty (50) years imprisonment. Judgment was delivered in this case on 28th September, 2011. The Applicant did not file an appeal against the said conviction and sentence.

However, on 17th July 2019, he lodged the present application seeking the reconsideration of his sentence. He stated that he was a first offender and was remorseful for the offence that he committed. During the period of his incarceration he had undertaken various courses that has made him a better person. He was ready to return back to society. He further stated that during the period of his detention, his children had suffered. He added that he was now reformed and had mended his wayward ways. He urged the court to allow his application for review of sentence. During the hearing of the application, the Applicant reiterated this position and urged the court to consider the dire straits that his family's situation was currently in.

Mr Omooria for the State opposed the application. He noted that the offence which the applicant was convicted attracted a sentence of life imprisonment. The Applicant's sentence was therefore lenient in the circumstances. He urged the court to dismiss the application.

Under **Section 20(1)** of the **Sexual Offences Act**, a person convicted of an offence similar to the one that the Applicant was convicted of is liable to be imprisoned for life. The sentence of Fifty (50) years imprisonment cannot be said to be lenient in the circumstance if the sentencing trends are taken into consideration. This court has considered the plea for reduction of sentence by the Applicant. It has also considered the circumstances in which the offence was committed. This court formed the view that the Applicant deserved a custodial sentence. However the sentence of Fifty (50) years imprisonment is against the recent sentencing trends. This court shall accordingly revise the same.

In the premises therefore the Applicant's custodial sentence of Fifty (50) years imprisonment is hereby set aside and substituted by a sentence of this court sentencing the Applicant to serve Thirty (30) years imprisonment with effect from 28th September 2011 when he was sentenced by the trial court. It is so ordered.

DATED AT KITALE THIS 21ST DAY OF DECEMBER, 2021.

L. KIMARU

JUDGE