



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC.APPL NO.129 OF 2018**

**NJOGU THUKU MACHARIA.....PETITIONER**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is a ruling on application for resentencing. The applicant was charged and convicted of the offence of **Rape Contrary to Section 40 of the Penal Code (Repealed)** and sentenced to **30 years imprisonment**. The officer in charge Naivasha Maximum Security Prison in his recommendation letter stated that the applicant had served 12 years in prison as at 19<sup>th</sup> July 2019 when he wrote the letter.

2. The recommendation letter indicate that the applicant has taken advantage of the rehabilitation program offered and joined carpentry section and that he is able to work with minimum supervision and has been promoted to trustee status; that he has also undergone a course in upholstery and acquired grade III,III and III. The offer in charge indicate that he has embraced correctional core value of reformation and rehabilitation.

3. The applicant submitted that he has served 14 years

4. In response the state counsel submitted that the trial court's sentence be uphold on ground that it was intended to deter and the trial court took account of relevant factors in respect to welfare of the victim.

5. State counsel further submitted that the applicant has served 12 years as per recommendation letter by officer in charge Naivasha Maximum Security Prison contrary to applicant's submission that he has served 14 years.

**ANALYSIS AND DETERMINATION**

6. From the recommendation letter by officer in charge Naivasha Maximum Security Prison, the applicant has reformed. He stated that the applicant had served 14 years as at 19<sup>th</sup> July 2019.

7. I note that the applicant was charged under **Section 140 of Penal Code** which was repealed by **Sexual Offence Act**. **Sexual Offence Act** provide for the offence of **Rape under Section 3 of the Act**. Sentence provided under **Sexual Offence Act** for rape is 10 years imprisonment, which can be enhanced to life imprisonment.

8. From the lower court record, the applicant pleaded guilty to the charge on 14<sup>th</sup> August 2006. He never said anything in mitigation. From the record, the trial court noted that the offence was carried out in the most heinous manner.

9. I however note that the applicant has been in prison for considerable period and must have had time to reflect on his action.

10. I also note that, he positively embraced correction in prison and has undertaken trainings, which will enable him, engage in gainful activities out of prison.

11. In view of the above, I am inclined to reduce the sentence to 15 years imprisonment.

**12. FINAL ORDER**

**1. Sentence reduced to 15 years imprisonment**

**2. Sentence to run from the date he was convicted by the trial court**

**Ruling dated, signed and delivered at Nakuru this 20<sup>th</sup> day of February. 2020**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:**

Schola – Court Assistant

Rita for State

Accused in person