



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPLICATION NO. 11 OF 2020**

**MUSYIMI NDAVA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant was convicted and sentenced to serve 35 years imprisonment for causing grievous harm in Mwingi SRMCRC No. 425 of 2012 on 21/5/2013.
2. He was aggrieved with the conviction and sentence aforesaid and thus lodged HCCRA No. 68 of 2013 at Garissa and the Court of Appeal and rejected same.
3. Now he has approached this court for re-sentencing relying on Supreme Court case of **Muruatetu** which held that mandatory aspect of a sentence is unconstitutional. The offence attracts a term of life sentence under section 344 of the Penal Code. However, after mitigation the trial court awarded Applicant 35 years' imprisonment.
4. The High Court in appeal also noted that maximum sentence was a life sentence and upheld the sentence after considering migrations and circumstances of the case and especially the seriousness of the injuries inflicted on the victim.
5. The Court of Appeal also in a second appeal declined to disturb the sentence imposed thus closing all avenues of challenging the same and bring the matter into a finality.
6. This is not the type of the case which lies within the purview of the Supreme Court case of **Muruatetu Supreme Court Petition No. 15 of 2015** which held that mandatory aspect of death sentence is unconstitutional which has now been extended by the superior courts to all mandatory aspects of all sentences.
7. Grievous harm has no mandatory sentence but only a maximum sentence which is life. The 35 years' imprisonment is a discretionary sentence which was meted out by the trial court and upheld 2<sup>nd</sup> court (High court) and finally by the Court of appeal.
8. Therefore, this court has no jurisdiction to question such a sentence under any law including Article 165 of the Constitution of Kenya.
9. Thus, this court makes the following orders: -

***(i) The application herein is struck out and file closed.***

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 23<sup>RD</sup> DAY OF JUNE, 2020.**

.....

**C. KARIUKI**

**JUDGE**