



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CORAM: A.K NDUNG'U J

CRIMINAL REVISION NO. 6 OF 2020

JAMES LEMISHO SAMURIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence of Hon. A.K Mokeross –

Ag. SRM dated 10th December 2014 at the Principal Magistrate's

Court at Kilgoris in Criminal (Sexual Offences) Case No. 94 of 2014)

RULING

1. James Lemisho Samuria was charged with the Gang rape contrary to **Section 10** of the **Sexual Offences Act No. 3 of 2006**. He was tried and convicted and a sentence of 15 years meted out on him.

2. Aggrieved by the sentence, the applicant lodged a revision before this court inviting this court to re-look at the sentence with a view to reducing the same. In addition to the notice of motion, the applicant has filed what he terms as mitigation citing 5 factors for the court to consider.

3. In his submissions, the applicant reiterates that he is not challenging the conviction. He seeks that the court reduces his sentence of 15 years to a manageable period. He seeks a non-custodial sentence.

4. In response, Mr. Otieno for the State opposed the application. He avers that the offence was proved and the sentence of 15 years is not harsh.

5. I have looked at the sentiments of the court while sentencing the applicant. The court stated;

“The punishment prescribed by the Law for an offence of gang rape is a minimum of 15 years imprisonment which may be enhanced to life. Consequently accused is sentenced to suffer imprisonment for 15 years.”

6. It is clear that the court tied itself to the minimum sentence provided in Law for the offence herein. In light of the decision in **Francis Karioko Muruatetu –vs- Republic** this is no longer good Law. The decision of the Supreme Court removed the shackles of minimum sentences leaving it to the court to mete out sentences based on circumstances of the case.

7. However, even as the shackles of minimum mandatory sentences are removed, we should not lose sight of the objectives of sentencing.

My understanding of Muruatetu case is to the effect that the Supreme Court did not out law minimum sentences. The Court only freed the hands of the court to be able to mete out appropriate sentences based on the circumstances of each case. Where a court has clearly expressed itself on the reasons why it has imposed a minimum sentence and such reasons are cogent, an appellate court should not interfere with the discretion in sentencing.

8. I summarize hereunder the objectives of sentencing for a better understanding of the applicable principles. Sentences are imposed for the

following objectives;

1. **Retribution:** To punish the offender for his/her criminal conduct in a just manner.
2. **Deterrence:** To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. **Rehabilitation:** To enable the offender reform from his criminal disposition and become a law abiding person.
4. **Restorative justice:** To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. **Community protection:** To protect the community by incapacitating the offender.
6. **Denunciation:** To communicate the community's condemnation of the criminal conduct.

As far as possible sentences passed should be geared towards meeting the above objectives in totality.

9. To the extent that the trial court bound itself to the minimum sentence provided in Law, I am persuaded that there is good ground to interfere with the sentence.
10. I am however quick to note the seriousness of the offence herein and the impact on the victim. No doubt a deterrent sentence is necessary.
11. I find and hold that the application herein is partially successful. I set aside the sentence of 15 years imprisonment imposed by the trial court and substitute thereof a sentence of 10 years imprisonment to run from the date of sentence by the trial court.

Dated, Signed and Delivered at KISII this 3rd day of August 2020.

A. K. NDUNG'U

JUDGE