



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC.APPL NO.124 OF 2019

JAMES WAHOME WAIRIMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **rape contrary to section 3 (1) (a) of the sexual offences Act no.3 of 2003**. He was sentenced to 32 years' imprisonment and the time of this application he had served 10 years' imprisonment.
2. He stated that he has reformed while in prison and converted to Christianity. He further stated that while in prison he has learnt acting for set books in Kiswahili to help students understand the subject better. He said besides acting he has learnt to work as a barber and sent certificates to confirm that through email.
3. The applicant submitted that the sentence was harsh; that he was 17 years old and not married at the time he was jailed; that he is now 23 years and has reformed. He stated that he regrets having committed the offence and explained that he committed the offence as a result of drinking alcohol.
4. In response the state counsel urged the court to consider that this was an act of personal and sexual violence against the victim resulting in psychological trauma; urged the court to consider that the victim suffered considerable injuries and that the applicant has only served 9 years and there is no effort of reconciliation with the victim; and the fact that the court stretched sentence from 10 to 32 years show that there are aggravating circumstances.

ANALYSIS AND DETERMINATION

5. The applicant herein was sentenced to 32 years for offence of rape contrary to section 3(1) (a). Section 3 (3) provide that a person guilty of the offence of rape is liable upon conviction to imprisonment for a term not less than 10 years which can be enhanced to life imprisonment. The trial magistrate enhanced the sentence to 32 years' imprisonment. The sentence is legal and the enhancement must have been informed by the circumstance of the case. There is however no doubt that the offence committed by the applicant was serious and he deserved deterrent sentence. His act must have caused mental and physical pain to the victim. I however note that the applicant has taken the period he has served prison positively and learnt skills to improve himself for his own benefit, family and community.
6. The applicant stated that he had not started his own family at the time of arrest. He stated that he is now 23 years old. Having taken imprisonment positively I am of the view that the applicant deserves reduction of sentence I do reduce sentence to 15 years' imprisonment.

7. FINAL ORDERS

1. Sentence is reduced to 15 years' imprisonment.
2. The sentence to start from the date of sentence by the trail court.

Ruling dated, signed and delivered via zoom at Nakuru

This 17th day of November 2020

.....

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Applicant in person present

Rita for State