



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

MISC. CR. APPLICATION NO 32 OF 2019

ALOIS MARAGIA ONYONKA.....APPLICANT

-versus-

REPUBLIC.....RESPONDENT

RULING

Re-sentencing on basis of Muruatetu

[1] The Notice of Motion filed herein on 27th August, 2019 seeks resentencing. In the affidavit in support, the applicant bases his request for resentencing on Muruatetu decision. According to him, in accordance with that decision, the mandatory life sentence is excessive and too harsh. He seeks its review.

[2] I do note however, that in his oral submissions to the court he also asked the court to take into account the time he had spent in jail. He also stated that this court should help him as he has no other court that will help him.

[3] The prosecution opposed the application and more specifically stated that courts have held that the case of Dismas Wafula Kilwake vs. Republic [2018] KLR does not apply respectively.

ANALYSIS AND DETERMINATION

[4] The prosecution argued that the case of Dismas Wafula does not apply respectively. There is no express direction in the case as was the case in Muruatetu case. Nonetheless, I do note that sentence was one of the issues contested in the Court of Appeal. The Court of Appeal found that the applicant had defiled his niece aged 10 years. They also found that this was an act of incest upon a girl of below 11 years. In sentencing, the gravity of the offence and the consequences of the offence on the victim are relevant factors. The sentence provided for defilement of or incest with a child below the age of 11 years is indicative of the seriousness of the offence. In this case, the child was aged 10 years- of quite tender age. In addition, the victim child was his niece. Let us not also forget that such trauma on a child leaves life-long indelible corrosive mark in her life. These are very serious matters which should be taken into consideration in sentencing. I do also note the mitigation by the applicant to wit; that his children are suffering; that he has spent considerable time in prison. When I take all these factors in consideration, I find life sentence to be appropriate sentence for the applicant. His application does not yield much and is rejected. It is so ordered. Right of appeal explained.

Dated, signed and delivered at NAROK through Microsoft Teams Online Application this 3RD day of February 2021

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F. GIKONYO

JUDGE

In the presence of:

- 1. Ms. Torosi for the Respondent
- 2. The appellant in person
- 3. Mr. Kasaso – Court Assistant

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F. GIKONYO

JUDGE