



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**PETITION NO. 166 OF 2019**

CT.....PETITIONER

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**JUDGMENT ON RESENTENCING**

1. The Petitioner herein CT was charged with the Offence of Incest contrary to 20 (1) of the Sexual Offences Act. He pleaded guilty to the offence and was sentenced to life imprisonment.

2. The particulars of the offence were that: -

*“between the month of August 2014 and 11<sup>th</sup> July, 2015 at Mwalipphamba location in Kwale County within coast province the petitioner caused his penis to penetrate the vagina of EMT a female aged 13 years who was to his knowledge his daughter and warned her not to tell anybody. He then repeated the act severally in his house and later in a thicket near his house. The complainant got pregnant and the accused took her to Kisimbe health center where an abortion was carried out. The Complainant revealed the incident to her aunt who informed her head teacher in [particulars withheld] primary school.”*

3. The Petitioner is now in this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which the apex Court found the mandatory nature of death sentence to be unconstitutional. As a corollary, the High Court in the **Constitutional Petition of Yusuf Shiunzi Kenani, Petition No.24 of 2019**, made a declaration that the mandatory penal laws in the sexual offences act are also unconstitutional.

4. **Ms. Moke** learned counsel for the State submitted that the Petitioner took away the innocence of his own child leaving the child scarred for life. He was meant to offer safety and protection to his child but failed to do so. Counsel prayed the Petitioner’s life sentence be reduced to 20 years.

5. The Petitioner on his part submitted that he agreed to the crime and even pleaded guilty; that he has reformed and his family has forgiven him. He sought forgiveness and prayed this court to consider giving him a jail sentence of 10 years.

6. In the **Muruatetu case (supra)** the court laid out the factors to consider when dealing with a resentence. The factors are; **age of the offender, being a first offender, whether the offender pleaded guilty, character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender, and any other factor that the Court considers relevant.**

7. In the instant case, whereas this was clearly a gender based violence crime against the Petitioner’s own child, the Petitioner is a first offender. He pleaded guilty; he has reformed as the prosecution also noted in their submissions.

8. In **KNN v Republic [2020] eKLR**, the court resented a Petitioner who was convicted of incest, from life imprisonment to a sentence of 20 years. It is my view that the petitioner shall be appropriately punished by a jail term of 20 years. Accordingly, I hereby set aside the life sentence imposed by the trial court and in place thereof I jail the Petitioner to serve a term in prison of twenty (20) years from the date of arrest.

**Dated, Signed and Delivered at Mombasa this 9<sup>th</sup> day of March, 2021.**

**E. K. OGOLA**

**JUDGE**

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Mr. Fedha for State

Mr. Josephat Court Assistant