



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO 110 OF 2017**

**FREDRICK GITARI MURIITHI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original Conviction and Sentence in Nanyuki CM Criminal Case No 170 of 2015 – E Ngigi, SRM)**

**J U D G M E N T**

1. The Appellant herein, **FREDRICK GITARI MURIITHI**, was convicted after trial of **defilement** contrary to **section 8(1) & (2)** of the **Sexual Offences Act, 2006**. It was alleged that on 27/02/2015 at [Particulars withheld] Village in Kieni East Sub-County within Nyeri County, he intentionally caused his penis to penetrate the vagina of one SNW, a child aged 10 years. On 16/10/2017 he was sentenced to life imprisonment.

2. Though the Appellant appealed against both conviction and sentence, at the time of hearing the appeal he (through his learned counsel) withdrew the appeal against conviction and argued only the appeal against sentence.

3. At the time the sentence was passed **life imprisonment** was mandatory where the victim of the defilement was aged 11 years or less. That is no longer the case following the decision of the **Supreme Court of Kenya** in its **Petitions Nos 15 & 16 of 2015, Francis Karioko Muruatetu & Another –v- Republic**. By that decision, that apex court declared as unconstitutional the mandatory nature of the sentence of death under **section 204** of the **Penal Code** for the offence of **murder** contrary to **section 203** of the same Code. By parity of reasoning, that decision surely must apply to all mandatory sentences. This court therefore has jurisdiction to re-look at the sentence of life imprisonment meted out to the Appellant.

4. The Appellant is a fairly young man who was born in January 1986. When he was arrested he was married with one child. He deserves another chance in life. Balanced against that is the fact that the victim was a child of 10 years who suffered enormous psychological and physical pain.

5. Having considered all the circumstances of this case, I am satisfied that life imprisonment is manifestly harsh and excessive. A substantial definite term of imprisonment will serve the ends of justice.

6. I will therefore partially allow the appeal against sentence by setting aside the life imprisonment and substituting therefor **imprisonment for ten (10) years from the date of sentencing by the trial court, which was 16/10/2017**. It is so ordered. To that limited extent only does the appeal against sentence succeed.

**DATED AND SIGNED AT NANYUKI THIS 5<sup>TH</sup> DAY OF MAY 2021**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 6<sup>TH</sup> DAY OF MAY 2021**