



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. 61 OF 2019**

**ABDULLAHI SHEIKH HUSSEIN.....APPLICANT**

**VERSUS**

**D.P.P.....RESPONDENT**

**RULING**

1. The applicant was convicted in Principal Magistrate's Criminal Case No. 1065/2010 in Garissa for offence of defilement under Section 8 (1) Sexual Offences Act. He denied the charge. He was found guilty and was sentenced to serve life imprisonment.
2. He lodged High Court Criminal Appeal No. 330 of 2010 at Garissa which dismissed the appeal after hearing the same. He proceeded to Court of Appeal in Criminal Appeal No. 36 of 2015. The same appeal was dismissed.
3. He has now moved this case on the re-sentencing as a result of the sentence of life imprisonment awarded without mitigation being considered as it was mandatory sentence for the offence charged.
4. He relies on Supreme Court Case of **Muruatetu in 2017 eKLR** which together with subsequent superior court decisions have declared the mandatory nature or aspect of a sentence as unconstitutional.
5. The prosecution does not oppose the application. Thus the court makes the following orders;
  - (i) **Criminal Case No. 1065/2010 Garissa Chief Magistrate's Court is set aside.**
  - (ii) **The matter is referred back to the Chief Magistrate Court Garissa for sentencing after considering mitigations.**

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2020.**

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**C. KARIUKI**

**JUDGE**