

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 75 OF 2019

ABDIKADIR ISSACK MOHAMMED.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was convicted and sentenced to serve 100 years for offence of defilement contrary to section 8(2) of the Sexual Offences Act No. 3 of 2006 for allegedly defiling a girl aged 6 years.
2. He appealed in HCCR No. 116 of 2012 High Court at Garissa. In its judgement the trial court held that the only sentence provided was life imprisonment under the law. That implied that life sentence was mandatory sentence. This was on 3/12/2013.
3. In December 2017 the Supreme Court vide Petition No. 15 of 2015 – **Muruatetu case** and subsequent supervisor court decisions, have held mandatory aspect of sentence is unconstitutional thus the substitution of 100 years to life sentence was unconstitutional and this court is mandated to interfere with the same sentence.
4. Thus this court as prosecution does not oppose application do make the following orders:

i. The sentence in CRC No. 148/2011 Wajir and subsequent substitution to life imprisonment is set aside.

ii. The applicant shall serve 15 years' imprisonment to run from 21/4/2011 when he was sentenced by the trial court.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 6TH DAY OF FEBRUARY, 2020.

.....

C. KARIUKI

JUDGE