

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 40 OF 2019

DOUGLAS MWENDWA NZUKI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with offence of defilement of a girl under the age of 15 years contrary to section 8(3) of the Sexual Offences Act No. 3 of 2006.
2. After full trial he was found guilty and was sentenced to serve 20 years imprisonment in Criminal Case No. 604 of 2010, Garissa.
3. Being aggrieved by aforesaid decision he lodged appeal No. 38 of 2014 in High Court at Garissa which after hearing the appeal dismissed the same and upheld the conviction sentence.
4. He never appealed to the Court of Appeal. However, he has now moved to this court via provisions of section 333(2) for review of the sentence.
5. The applicant in the appeal did not challenge the sentence but conviction thus the court noted, ***“the appellant has not appealed against the sentence however I have considered the same and it is the minimum thus it is therefore lawful. I will also uphold the same sentence.”***
6. The applicant having not challenged the aforesaid sentence and having not gone to Court of Appeal, he cannot now purport to challenge the same outside the appeal.
7. Provision of section 333(2) of the Criminal Procedure Code applies only after conviction and before sentence after mitigations.
8. This court has no jurisdiction to review a sentence which has been upheld by a judge of concurrent jurisdiction. The applicant has not moved this court under the resentencing principles of supreme case of **Muruatetu** and subsequent superior court cases on the unconstitutionality of the mandatory aspect of the sentences.
9. Thus the applicant remedy lies in the court of appeal where he can appeal against the sentence severity, harshness and or excessiveness.

(i) Thus application is dismissed.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 5TH DAY OF FEBRUARY, 2020.

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C. KARIUKI

JUDGE