



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPLICATION NO. 30 OF 2019**

**MULI MWALYO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was convicted and sentenced to life imprisonment for the offence of defilement on allegation of defiling an 8 yrs and 11 months and 23 days girl.
2. He lodged appeal in High Court at Garissa No. 97 of 2014 which was dismissed and sentence upheld on the ground that it was mandatory sentence.
3. He never appealed to the Court of Appeal. He seeks resentencing under the spirit of **Muruatetu case Supreme Court decision No. 15 and 16 of 2015** and made on 14/12/017 which has inspired superior courts to rule that mandatory aspect of a sentence is unconstitutional.
4. The prosecution does not oppose the application. Thus the application succeeds and court makes the following orders:

**i. The life sentence in Mwingi SRMCRC No. 553 of 2013 is set aside.**

**ii. Matter is referred back to Mwingi Law Courts for sentencing after mitigation is considered.**

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2020.**

.....

**C. KARIUKI**

**JUDGE**