

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 33 OF 2019

NAA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with incest with a child aged 11 years contrary to section 20(1) of the Sexual Offences Act No. 3 of 2006.
2. He was tried and convicted and sentenced to life imprisonment in Criminal No. 2024 of 2011, Garissa.
3. He lodged appeal No. 42 of 2012 which after hearing dismissed the appeal. He did not appeal. He has now moved court for resentencing pursuant to Supreme Court case of **Muruatetu** which held that mandatory aspect of a sentence is unconstitutional as also followed by other Supreme Court decision in matters of life sentences and mandatory minimum sentences.
4. I note that on 24/2/2012 the trial magistrate in sentencing the applicant held that, *“the only sentence provided by law is life imprisonment.”* Thus awarded applicant life sentence.
5. The High Court judgement in appeal on 2012 said it would not interfere with the sentence. This was a period before the Supreme Court case of **Muruatetu** judgement of 2015. Thus the sentence would stand to be unconstitutional as mitigation was ignored as it was the mandatory sentence.
6. Thus this court makes the following orders: -

(i) The order on sentence of life is hereby set aside and matter referred to Chief Magistrate’s Court Garissa to sentence him after considering mitigations.

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

.....

C. KARIUKI

JUDGE