

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 96 OF 2019

OMAR MOHAMED IBRAHIM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with offence of defilement of a girl aged 14 years contrary to section 9(1) (2) of the Sexual Offences Act No. 3 of 2006 whereof he pleaded not guilty and after trial he was convicted and sentenced to serve 10 years imprisonment running from 19/7/2013. This was in Criminal Case No. 248 of 2012 – Mandera.
2. He lodged appeal No. 136 of 2013 at High Court in Garissa whereof after same was heard same was dismissed for want of merit on 8/4/2014.
3. He never appealed thereafter. However he has moved court on the basis of the Supreme Court case of *Francis Karioko Muruatetu [2017] eKLR* and subsequent superior courts decisions which have declared that the mandatory aspect of the sentence is unconstitutional.
4. The applicant was sentenced to serve 10 years imprisonment on the basis that, this was the only mandatory minimum sentence availed by then and the mitigations tendered were not considered.
5. He has already served 8 or 9 years or so and he says he will be discharged from prison towards the end of March 2020.
6. He has learned several courses and trade in prison and seeks court to nullify the 10 years mandatory sentence awarded to him and substitute it with period already served.
7. The court is inclined to accede to the request as prosecution concedes that the trial court mandatory sentence cannot stand in view of the **Muruatetu case** and subsequent superior courts decisions on same subject.
8. Thus this court makes the following orders:

(i) The sentence of 10 years imprisonment made in Mandera PMCRC No. 248 of 2012 is set aside.

(ii) The applicant is sentenced to the already served period. Thus he shall be released forthwith.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 13TH DAY OF FEBRUARY, 2020.

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C. KARIUKI

JUDGE