



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 57 OF 2019

BAKARI NDORO.....PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner was convicted for the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006 in Malindi Cr. Case No. 327 of 2009 and was sentenced to 24 years imprisonment. He appealed in HCCRA No. 15 of 2011 which upheld the same sentence and Criminal Appeal. No. 63 of 2015 which overturned the sentence and handed the Petitioner a life sentence.

2. The Petitioner has now petitioned this court for review of sentence in view of the Supreme Court declaration in *Francis Kariokor Muruatetu & Another vs. Republic SCK Pet. No. 15 of 2015 (2017) eKLR*, which decided that mandatory nature of any sentence is unconstitutional.

Brief Circumstance of the offence

3. The particulars are that on 19th June, 2009 sexually assaulted the complainant aged 8 years. He was sentenced to 21 years but the Court of Appeal enhanced the sentence to life in prison. The Petitioner now prays for a review of the life sentence citing aforesaid case of *Muruatetu*. The Petitioner submitted that the court did not consider his mitigation as he is a first offender and has never been accused of breaking the law and at the same time he is very remorseful. The Petitioner apologized for the offence he committed and submitted that he regrets what he did. He has already spent 10 years in prison and is also unwell having contracted TB. He prays that he be jailed for the 21 years handed to him by the trial court.

4. The prosecution submitted that the Petitioner was sentenced to 21 years and Court of Appeal enhanced the same to life imprisonment. That while committing the offence the Petitioner injured the minor and therefore the life imprisonment handed to the Petitioner should not be interfered with and that in any event the Petitioner is not remorseful and has not even sought reconciliation with the minor's family.

5. This Court has the Jurisdiction to review the sentence herein since it is a mandatory sentence under the Section 8(1) of the Sexual Offences Act. The Court of Appeal in imposing the life sentence, cited the mandatory nature of the sentencing Section. However the offence for which the Petitioner was convicted is a serious offence. That the Act requires the offence to be punished by life in prison attests to that seriousness. Accordingly therefore, while I set aside the life sentence, the same must be replaced by a sentence which reflects the gravity of the offence.

8. In consideration of the premises herein, I hereby jail the Petitioner to serve a jail term of Twenty Eight (28) years from the date of the arrest.

That is the Judgment of the court.

Right of appeal in 14 days.

Dated, Signed and Delivered at Mombasa this 9th day April, of 2020.

E. K. O. OGOLA

JUDGE

In the presence of:

Petitioner in person via video link

Ms. Mwangeka for DPP

Mr. Kaunda Court Assistant