

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 65 OF 2019

HASSAN ABDI KULANT.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was the 1st accused in trial court where he was convicted and sentenced to serve life imprisonment for defilement of a girl aged 6 years.
2. He lodged Criminal Appeal No. 75 of 2015 as consolidated with Criminal Appeal NO. 76 of 2015. After hearing the same was dismissed.
3. He did not go to Court of Appeal. He now moves this court for resentencing as he was awarded mandatory life sentence in Criminal Case No. 104 of 2013 at Garissa.
4. The prosecution does not oppose the application. The applicant relied on the Supreme Court case of **Muruatetu 2017 eKLR** which held that mandatory nature of death sentence is unconstitutional. Same ruling has been applied to mandatory nature of minimum sentences by the High Court and the Court of Appeal.
5. Thus the court makes the following orders:

(i) The sentence of death in Criminal Case No. 104 of 2013 – Garissa Chief Magistrate’s Court is set aside.

(ii) The matter is referred back to the Chief Magistrate’s Court at Garissa for sentencing after considering mitigations.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 2ND DAY OF APRIL, 2020.

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C. KARIUKI

JUDGE