

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 32 OF 2019

IBRAHIM ABDI HASSAN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was convicted and jailed 15 years on his plea of guilty for offence of defilement of a girl aged 13 years.
2. He appealed vide High Court Criminal Appeal No. 80 of 2012 at Garissa whereof the court dismissed his appeal and enhanced his sentence to 20 years' imprisonment.
3. He never appealed to the Court of Appeal but has now applied this court for reduction of sentence.
4. I note that in Criminal Case No. 1913 of 2010 at Garissa the trial court did not base sentence on mandatory minimum sentence prescriptive rule.
5. The court considered the mitigations and awarded 15 years which was by law mandatory minimum sentence of 20 years. The High Court in appeal enhanced the sentence to 20 years not on the basis of it being minimum sentence, but on the basis of the facts and the circumstances of the case.
6. This court cannot usurp the Court of Appeal role therefore to reduce High Court sentence. The applicant ought to have appealed against the sentence made by the High Court.
7. Thus, **the court finds no merit in application and same is dismissed.**

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

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C. KARIUKI

JUDGE