

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

MISC. CRIMINAL APPLICATION NO. 73 OF 2019

IBRAHIM HURIYE DEROW.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to life imprisonment with offence of defilement contrary to Section 8 (1) (2) of Sexual Offences Act No. 30/2006 in Criminal Case No. 1600 of 2012.
2. He lodged appeal No. 134/013 which was also dismissed after full hearing.
3. He has now moved this court for re-sentencing relying on Muruatetu case and the subsequent Superior Court case which held that the mandatory nature of sentence is unconstitutional.
4. The prosecution does not oppose the application but urges court to refer file to Lower Court for mitigation and sentence.
5. Thus, the court makes the following orders;

(i) The life sentence in Criminal Case No. 1600/012 Garissa is set aside.

(ii) The matter is referred to Chief Magistrate's Court at Garissa for sentencing after mitigation are considered.

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

.....

C. KARIUKI

JUDGE