



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 61 OF 2019

KABWERE CHIRO KABWERE.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The Petitioner herein Kabwere Chiro Kabwere was charged and convicted for the offence of defilement contrary to Section 8 (1) and (2) of the Sexual Offences Act and sentenced to life in prison. He appealed to the High Court and the appeal was dismissed. His second appeal to the Court of Appeal in Mombasa Criminal Appeal No. 484 of 2010 was equally dismissed on 21/6/2013.

2. The Petitioner is now before this court pursuant to the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** in which the apex court found the mandatory nature of life sentence to be unconstitutional.

3. The Petitioner was convicted of defiling a girl of 9 years on 14/3/2008 at 7.30 a.m.

4. In her submission Ms. Mutua, learned Counsel for the prosecution submitted that this court can review the sentence but urged that the offence of defilement for a child of 9 years is so grave that the court, in reviewing the life sentence, herein should substitute the same with imprisonment of 40 years.

5. On his part the Petitioner submitted that he has been in jail for 11 years and prayed to be jailed for a total of 15 years.

6. I have considered the petition and submissions. The offence for which the Petitioner was convicted is so grave and demands a deterrent sentence. The Petitioner did not appear remorseful at all, and did not give any reasons why the court should be merciful to him.

7. In the upshot I make the following orders:

(i) I lift the life sentence herein, and in place thereof I jail the Petitioner to a term of Twenty Eight (28) years from the date of arrest.

8. That is the Judgment of the Court.

9. Right of appeal within 14 days.

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

E. K. O. OGOLA

JUDGE

In the presence of:

Ms. Mwangeka for DPP

Petitioner in person via video link

