



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC.APPL NO.63 OF 2019

ABRAHAM KADENYI ALUSA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. This is a ruling on application for resentencing. The applicant had been charged and convicted of the offence of **defilement contrary to Section 8 (1) of the Penal Code**. He was sentenced to life imprisonment. He has exhausted his right of appeal by filing appeal in both the High Court and Court of Appeal.

2. The applicant relied on the case of **Francis Karioko Muruatetu Vs Republic [2017] eKLR** to argue that the mandatory life sentence imposed by the trial Court and upheld by the High Court is excessive and harsh and sought an appropriate sentence.

3. The applicant orally submitted that he has served sentence for 11 years now and has had opportunity to train as Carpenter Grade 1, II and III; and he is also Chaplain SDA and Adventist Chaplain and has obtained Certificate of Discipleship and Voice of Prophecy. He prayed that he be given an opportunity to go back to the community.

ANALYSIS AND DETERMINATION

4. The applicant herein was sentenced to life imprisonment before the Supreme Court's decision in **Francis Karioko Muruatetu Vs Republic [2017] eKLR**. The Supreme Court declared unconstitutional the mandatory nature of sentence imposed as it takes away the discretion of the trial Court to determine sentence to impose depending on circumstances and mitigation factors advanced in a particular case. The Supreme Court found that the taking away of discretion of the Court renders the mitigating factors superfluous.

5. Whereas I agree that sentences under **Sexual Offences Act** are serious especially where the complainant is a minor, the Court has to look at circumstances of each case; consider age of minor and mitigation of the accused person.

6. I note from the charge that the applicant was charged with defilement of a girl under 10 years. The life sentence was intended to serve to deter the would-be offender from defiling minors. I note that the applicant has served a period of 11 years. He took imprisonment positively and learnt skills to improve himself for his benefit, family and community. This is evidence of resolve to reform and be of benefit to the society.

7. In view of the above, I find that the applicant deserves reduction of sentence. I therefore reduce the applicant's sentence to 20 years' imprisonment.

8. FINAL ORDERS

1. Sentence is reduced to 20 years' imprisonment.
2. The sentence to run from the time the applicant was sentenced in the lower court.

Ruling dated, signed and delivered via zoom at Nakuru

This 16th day of May, 2020

RACHEL NGETICH

JUDGE

In the presence of:

Schola - Court Assistant

Applicant in person present

Rita for State