



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

MISC CR. APPLICATION NO. 5 OF 2019

JOSHUA MBAUTI KIOKO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Conviction and Sentence in Mwingi Senior Principal Magistrate's Court Criminal Case (S.O.) No. 635 of 2004 by Hon. Richard Odenyo (SRM) on 28/8/2007)

J U D G M E N T

1. The Petitioner was charged with the offence of **Incest** Contrary to **Section 166 (i)** of the **Penal Code**. Particulars being that on diverse dates between **21st** and **24th May 2005** at **Kalage village, Nguni location, Mwingi District** of **Eastern Province** being a male person had carnal knowledge of **Mbula Mbauti Kioko** a female who was to his knowledge his daughter.
2. He denied charge and after trial he was **convicted** and sentenced to **life imprisonment**.
3. He lodged HCCRA 149/07 at Machakos which was summarily dismissed.
4. He thus moved Court after **servng 13 years** for resentencing via Petition filed on **16/10/2018**.
5. The minimum sentence for incest where the victim is an adult is **10 years imprisonment**. The victim herein was 20 years old then at the time of the commission of the offence.
6. The circumstances are that the Petitioner threatened the daughter then she conceded and he had sex with her.
7. The principles guidelines on sentencing provide that factors like being a first offender to determine the extent of the sentence including the circumstances of the offence in every case.
8. The court finds that the sentence of life imprisonment was extremely harsh in all the circumstances i.e. from 10 years to life the Petitioner has already served 13 years.
9. The prosecution did not oppose and even suggested court ordering the period served to be deemed adequate.
10. This court agrees with the same and orders that:
 - (i) **Conviction is upheld and confirmed.**
 - (ii) **The sentence of life is asset aside and substituted with the period already served.**
 - (iii) **The Petitioner to be released forthwith.**
11. It is so ordered.

Dated, Signed and Delivered at Kitui this 18th day of October 2019

C. KARIUKI

JUDGE