

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 77 OF 2019

GEORGE GITONGA MBITI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant/accused was charged with, tried and convicted and sentenced on 22/7/2010 by Resident Magistrate Hola to 20 years imprisonment for offence of defilement of a girl aged between 12 and 15 years.
2. He filed appeal No. 40 of 2012 in High Court at Garissa which dismissed same on 16/10/2012. He did not appeal to Court of Appeal but now comes to this court for resentencing.
3. In sentencing in the Hola Senior Resident Magistrate's Court the trial magistrate held; ***“although accused appears remorseful, there is only one sentence prescribed under section 8(1) (3) of the Sexual Offences Act. The minimum sentence is an imprisonment of a term not less than 20 years and this court has no alternative.”*** Thus sentence of 20 years imposed.
4. The mandatory aspect of minimum sentence has been declared unconstitutional. Thus the applicant/accused has right to challenge the same in the instant matter.
5. The prosecution does not oppose same. Thus the court makes the following orders:-

(1) The minimum mandatory sentence award to the applicant in Criminal Case No. 33 of 2009 – Hola Senior Resident Magistrate's Court on 22/7/2010 is set aside.

(2) The applicant/accused referred back to Hola Senior Resident Magistrate's Court for resentencing after court considers mitigation and period applicant/accused has been in custody since arrest.

(3) Orders accordingly.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 5TH DAY OF NOVEMBER, 2019.

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C. KARIUKI

JUDGE