



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL APPEAL NO. 75 OF 2017**

**HASSAN MOHAMED FARAH.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The appellant was convicted on his own plea of guilty for offence of defilement of a girl aged 11 years contrary to section 8(2) of the Sexual Offences Act No. 3 of 2006 and was sentenced to life imprisonment.
2. He filed HCCRA No. 427 of 2008 in Nairobi which was dismissed after it was heard fully.
3. He lodged in Court of Appeal Case No. 251 of 2010 which was also dismissed after he was heard. He has been in custody since 28/7/2008 a span of 11 years or so.
4. He has now moved court for resentencing. The State does not oppose as he was awarded a mandatory life sentence without considering his mitigation.
5. The mandatory sentence aspect has been declared unconstitutional in **Muruatetu** Supreme Court case and other cases which emulated same **Muruatetu** case.
6. **Muruatetu** case was on mandatory death sentence but same principle of nullifying mandatory sentence has been spread to all offences with mandatory aspect of sentence.
7. Thus this court will make the following orders:-

*i. The life sentence is set aside.*

*ii. The matter is referred back to Garissa Chief Magistrate's Court in Criminal Case No. 485 of 2008 for resentencing.*

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2019.**

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**C. KARIUKI**

**JUDGE**