

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 39 OF 2019

PAUL SYENGO MUSYOKA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with offence of defilement contrary to section 8(1) and (2) of the Sexual Offences Act No. 3 of 2006. Particulars being that on 23/10/2012 in [particulars withheld] Sub-Location, Tseikuru District, Kitui County intentionally caused his penis to penetrate vagina of DM child aged 9 years. In alternative indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006. On same particulars he caused his genital organ namely penis to touch vagina of DM child aged 9 years.

2. He was convicted and sentenced to serve life imprisonment by Principal Magistrate's Court in Kyuso Principal Magistrate's Court Criminal Case No. 234 of 2012.

3. He appealed in High Court at Garissa and on 6/5/2015 his appeal was dismissed vide HCCRA No. 69 of 2014 Garissa. He appealed to Court of Appeal vide Criminal Appeal No. 142 of 2015 which was dismissed on 8/2/2019.

4. He has now moved court for resentencing as he was awarded mandatory life sentence which has since been declared unconstitutional.

5. The State does not oppose thus the court makes the following orders:-

(1) The life sentence imposed in Kyuso Principal Magistrate's Court Criminal Case No. 234 of 2012 on 8/8/2014 is set aside.

(2) The applicant/accused is referred to Principal Magistrate's Court at Kyuso for resentencing after court considers mitigation and period he has been in custody since arrest.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 6TH DAY OF NOVEMBER, 2019.

C. KARIUKI

JUDGE