



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO. E003 OF 2021

BRIAN WABUKE WAFULA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement of Hon. A. Odawo, - SRM., dated 21st January 2021, in the CM'S Court at Bungoma, in S.O. Criminal Case No.51 of 2019, Republic vs Brian Wabuke Wafula)

JUDGEMENT

The appellant has appealed against his sentence of nine (9) years imprisonment following his conviction in respect of the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the Sexual Offence Act No. 3 of 2006.

In this court the appellant has filed five grounds in his petition of appeal.

In ground 1 the appellant has stated that he was a first offender.

In ground 2 the appellant has stated that he is remorseful.

In ground 3 the appellant has stated that he was brought up in a poor family background and is the sole breadwinner of his family.

In ground 4 he has stated that the sentence meted out is excessive in the circumstances.

In ground 5 the appellant has requested that the sentence be substituted with a non-custodial sentence.

The submissions of the appellant.

In his written submissions the appellant has submitted as follows. The sentence is harsh and has caused him psychological torture. He is a first offender. He has been rehabilitated. He is the sole bread winner of his family and he is responsible for the education of his sister.

The submissions of the respondent

Counsel for the respondent has supported the sentence because it is the prescribed minimum mandatory sentence.

Counsel has urged the court to dismiss it.

Findings of the court.

This is a first appeal. I have re-evaluated the principles to be followed in respect of sentencing in matters where the sentence imposed is the mandatory statutory minimum. The appeal is only against sentence. It is a mandatory sentence that was imposed by the trial court. That court had no choice in respect of sentencing the appellant to the mandatory sentence of nine years imprisonment.

Furthermore, I also do not have any discretion to interfere with the mandatory statutory minimum sentence that was imposed by the trial court.

In the circumstances, I find that the sentence imposed is authorized by law.

In the premises, I find no merit in the appeal which I hereby dismiss for lacking in merit.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE THIS
24TH DAY OF FEBRUARY, 2022**

J M BWONWONG'A

JUDGE

In the presence of:-

Mr. Kinyua: Court Assistant

The appellant – present in prison

Ms Mukangu for the Respondent