



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 70 OF 2020

SMB.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein was charged with the offence of defilement contrary to **Section 8(1) as read with Section 8(3) of the Sexual Offences Act**. The particulars were that on unknown dates in the month of **October 2009** at [Particulars Withheld], the accused did an act which caused penetration of his penis to the vagina of **KM**, a girl aged 16 years.
2. The Petitioner was also facing an alternative charge of committing an indecent act with a child contrary to **Section 11(1) of the Sexual Offences Act, No.3 of 2006**. The particulars of the offence were that on unknown date in the month of **October 2009** at [Particulars Withheld] the Petitioner unlawfully and intentionally caused his penis to touch the vagina of **KM** a child aged 16 years.
3. The Petitioner pleaded not guilty to both counts. Upon hearing he was convicted and sentenced to serve 20 years imprisonment.
4. His appeal to the High Court was dismissed and the court upheld the trial court conviction and sentence.

Circumstances of the case

5. The Petitioner lured the complainant to having sex with her. As a result of the defilement she fell pregnant and got a child. The immunization cards produced in court proved that the victim was 15 years at the time the offence was committed. The DNA profile report produced in court confirmed that the Petitioner was the father of the victim's child. The Petitioner was the complainant's uncle and therefore had knowledge that the complainant was a minor at the time the offence was committed.
6. In mitigation the Petitioner submitted that he has reformed; and that he had children to take care of. Further, that he has learnt theology and is now a preacher. He also submitted that he has ulcers and so he should be released to go and seek personal medication outside prison.
7. On her part **M/S Wanjohi** learned prosecutor submitted that the Petitioner defiled her brother's daughter. Counsel submitted that the sentence of 20 years be reduced to 15 years.
8. I have considered the submissions of both parties.
9. In a similar case the court at **AJM v Republic [2019]eKLR** expressed itself thus: -

“...Further the Appellant intruded into the sexual privacy of MI whom he knew was his brother's daughter, and shamelessly made her pregnant. The appellant and others who are like minded are a social menace who should be kept away from the society in an effort to make life easier and safer for growing up children. I therefore find no reason to interfere with the sentence imposed by the trial court. If the appellant had been convicted of incest he would be jailed for life”.

10. In the **Hashon Bundi Gitonga v Republic [2020]eKLR**, the court substituted a sentence of 20 years' imprisonment to 15 years imprisonment.
11. Taking into account the circumstances of the case and the relationship between the Petitioner and the victim, I herewith resentence the Petitioner to serve 15 years imprisonment from the date of arrest.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF JUNE, 2021.

E. K. OGOLA

JUDGE

Ruling delivered via MS Teams in the presence of:

Petitioner in person

Ms. Wanjohi for State

Ms. Peris Court Assistant