

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL APPEAL NO. 39 OF 2019

BENSON WILBADI NGIBWA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in S.O.A case No.6 of 2018 of the Principal Magistrate's Court at Oyugis by Hon. J. S Wesonga–Senior Resident Magistrate)

JUDGMENT

1. Benson Wilbadi Ngibwa, the appellant herein, was convicted for the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the Sexual Offences Act No.3 of 2006.
2. The particulars of the offence were that on diverse dates between 7th and 16th February, 2018 at Koderia North sub location in Rachuonyo South Sub-County within Homa Bay County intentionally and unlawfully caused his penis to penetrate the vagina of FAO, a child aged 16 years.
3. The appellant was sentenced to serve 15 years imprisonment. He has appealed against sentence only.
4. He raised ten grounds of appeal which can be summarised as follows:
 - a) That the sentence was harsh.
 - b) That he has undergone rehabilitation.
5. The appeal was opposed by the state through Mr. Ochengo, learned counsel who contended that the sentence was appropriate.
6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32**.
7. Section 8(4) of the Sexual Offences Act states:

A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
8. The appellant was sentenced to the minimum prescribed sentence. The learned trial court cannot therefore be faulted. I accordingly dismiss the appeal for lack of merits.

DELIVERED AND SIGNED AT HOMA BAY THIS 24TH DAY OF JUNE, 2021

KIARIE WAWERU KIARIE

JUDGE