

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. CRIMINAL APPLICATION NO. 70 OF 2019

BONFACE WAFULA WANJALAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant **Boniface Wafula Wanjala** was convicted of the offence of **defilement** of a child contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act**. The trial found as a fact that the Prosecution had established, to the required standard of Proof, that on diverse dates between 30th July 2009 and 6th August 2009 at [particulars withheld] area in Trans Nzoia County, the Applicant caused his male genital organ to penetrate the female genital organ of the complainant (L.N.), a girl then aged eleven (11) years. The Applicant was sentenced to serve twenty (20) years imprisonment on 26th October 2012. The Applicant not did indicate whether he filed an appeal against the said verdict.

However, on 9th April 2019, he filed an application before this court seeking the review of his sentence. The Applicant stated that he was remorseful and had learnt his lesson during the period of nine (9) years that he has been in prison. He urged the court to consider substituting his custodial sentence with a non-custodial one. The Applicant urged the court to exercise mercy on him. Mr Omooria for the State opposed the application for review of sentence. He submitted that the sentence imposed by the trial court was legal. No evidence had been placed before the court to warrant reduction of sentence. He urged the court to dismiss the application.

This court has carefully considered the rival submission made by parties to this application. On the issue of whether the sentence imposed on the Applicant was legal, **Section 8(2)** of the **Sexual Offences Act** provides that if a person is convicted of defilement under **Section 8(1)** of the **Sexual Offences Act** and the victim is aged eleven (11) years or less, then the person shall be sentenced to serve life imprisonment. The victim in this case was aged eleven (11) years. The Applicant was sentenced to serve twenty (20) years imprisonment. This was an extremely lenient sentence. The Applicant should ride his luck. This court agrees with the prosecution that taking into consideration the circumstances in which the offence was committed, that custodial sentence that was meted on the Applicant fitted the crime. Despite the Applicant's mitigation, this court is of the considered view that the ends of justice was served in the sentence.

The Application lacks merit and is hereby dismissed. It is so ordered.

DATED AT KITALE THIS 21ST DAY OF DECEMBER, 2021

L. KIMARU

JUDGE