



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CRIMINAL PETITION NO. E009 OF 2021**

**JAMES OYUGI MAUNGU....PETITIONER**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Petitioner, **JAMES OYUGI MAUNGU**, was sentenced to 30 Years imprisonment for the offence of **defilement**.

1. By the Petition herein, he has sought a reduction of the sentence. He has also asked the Court to direct that the sentence should run from the date when he was arrested.
2. He told this Court that during the seven (7) years he had served in jail, he had forgiven himself and he had also asked God to forgive him.
3. He stated that he was truly remorseful.
4. Whilst in prison custody, he had undertaken trainings, which would enable him to sustain himself if he was given a second chance in life.
5. He invited the Court to direct that the balance of the sentence be served on Probation. In that respect, the Petitioner cited **Section 39 (2)** of the **Sexual Offences Act**, as granting the Court discretion to release an offender who had served part of the sentence imposed on him.
6. The Petitioner was convicted on his own plea of guilty.
7. The admitted facts were that the Complainant was 10 years old at the time when the offence was committed.
8. Her grandmother sent her to take slippers for repairs. The Petitioner used to repair slippers and shoes at his house.
9. When the Complaint was at the Petitioner's house, he undressed her and then defiled her.
10. After the Petitioner confirmed that the facts giving rise to the charges facing him were correct, he was convicted.
11. He was then accorded an opportunity for mitigation. During mitigation the Petitioner told the Court that his wife had died, leaving him with 2 children. He explained that the 2 children relied upon him.
12. The Petitioner also said that at the material time he was drunk, and he therefore did not know what he was doing.
13. He went further to say that he would never repeat the offence again.
14. Finally, the Petitioner requested the Court to be lenient, as he was remorseful.
15. I have set out the mitigation at length because it shows that the sentence was not just handed down because it was mandatory.
16. Indeed, the trial Court took into account the mitigation, including the fact that the Petitioner was a first offender.
17. In my considered view, the Petitioner failed to demonstrate to this Court that there was any legal foundation for resentencing.

18. In any event, under **Sectin 8 (1) (2)** of the **Sexual Offences Act**, a person who commits the offence of defilement with a child aged eleven (11) years or less is liable to be sentenced to Life imprisonment. Therefore, when the learned trial magistrate sentenced the Petitioner to 30 Years imprisonment, he exercised his discretion. He held that the harsh sentences prescribed by the **Sexual Offences Act** were intended to protect children from sex predators.

19. As offences of defilement were said to be prevalent within the country, the trial Court felt that there was a need to hand down the sentence of 30 Years imprisonment, so that it could serve as a deterrence to other persons who had similar inclinations.

20. I find that the sentence was appropriate in the circumstances.

21. Finally, the Petitioner was convicted and sentenced within 2 days of his arrest. Pursuant to **Section 333 (2)** of the **Criminal Procedure Code**, the period which the Petitioner is to serve in jail shall be reduced by 2 days, in order to take into account the period spent in custody.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**FRED A. OCHIENG**

**JUDGE**