



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL CASE NO. 114 OF 2019**

**LESIT, J.**

**JOHN MWENGA NZOMO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an appeal from the original conviction and sentence by Hon. Stephen Jalang'o (PM) dated 15<sup>th</sup> March, 2019 in Makadara Chief Magistrate's Court, Criminal Case No.2641 of 2015)***

**JUDGEMENT**

1. The Appellant **JOHN MWENGA NZOMO** was convicted of **Defilement** of a **Child** contrary to **section 8(1)** as read with **section 8(3)** of the **Sexual Offences Act**. He was sentenced to serve 10 years' imprisonment. He filed his appeal to this court challenging both the conviction and sentence. However, when he appeared before this court through TEAMS Meeting, he dropped his appeal against the conviction and argued his appeal against sentence.
2. In his address against the sentence, the Appellant urged the court to reduce his sentence of 10 years urging he was a first offender, he was sole bread winner of his family, parents and grandmother and that he was remorseful for what he did.
3. The Appellant submitted that he will go back to school to advance his education if he was given the chance. He said that he will never repeat such an offence again.
4. The appeal was opposed. Ms Nyauncho, Learned Prosecution Counsel urged that the trial court had taken into account the time Appellant spent in custody pending his trial and therefore that ought not to be considered again. Counsel urged that the offence was aggravated because the Appellant threw the complainant a child of 15 years, into a sewage before pulling her out, tearing her skirt and shirt and defiling her. She urged that the complainant was going home from school when he attacked her.
5. Ms Nyauncho urged that the complainant lost consciousness and was admitted in hospital for 4 days following this attack. She urged the court not to disturb the sentence.
6. I have considered this appeal Sentencing Guidelines.
7. On principles of sentencing one of the principles deals with aggravation of offences.in this case, the prosecution proved the circumstances under which the offence was committed. The Appellant accosted the complainant as she walked home from school. This was a school girl in uniform. The Appellant robbed her of her innocence despite seeing she was a school going child.
8. Secondly the prosecution proved that the Appellant was very callous and violent. He first threw the complainant inside sewage before removing her from it and defiling her. This was psychologically, mentally and physically traumatizing.
9. The sentence prescribed for defilement under **section 8(3)** of **Sexual Offences Act** is 15 years' imprisonment. The Appellant was sentenced to 10 years' imprisonment. That sentence is too lenient. I agree with the State that it ought not to be interfered with.
10. In the result, I find no merit in the Appellant's appeal against the sentence. The same is dismissed in its entirety.

**DELIVERED AT NAIROBI THROUGH TEAMS THIS 30<sup>TH</sup> DAY OF JULY, 2020.**

**LESIT, J.**

**JUDGE**

In presence of

Appellant in person

Mr. Momanyi for State

Gitonga – Court Assistant

Language – English/Swahili

**LESIT, J.**

**JUDGE**

**30/7/2020**