



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 57 OF 2019

PAUL NGANGA CHEGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the Judgment/Decree and Orders of Hon E. Kelly Senior Resident Magistrate dated 6th day of August 2019 in Nakuru Court Criminal Case No. 141 of 2017)

RULING

1. The appellant was charged with the offence of **defilement contrary to Section 8(1) as read with subsection (3) of the Sexual Offences Act No.3 of 2006**. Particulars were that on 7th July 2017 in Mirangine Sub County within Nyandarua County accused intentionally and unlawfully did cause his genital organ namely penis to penetrate genital organ namely vagina of **GW** a child aged 13 years which caused penetration.

2. The appellant was also charged with alternative charge of **indecent with a child contrary to Section 11(1) of the Sexual Offences Act No.3 of 2006**. The particulars are that on 7th July 2017 in Mirangine Sub County within Nyandarua County unlawfully and intentionally touched the vagina of **GWM** a child age 13 years with his hands.

3. The appellant pleaded not guilty; the case proceeded for full trial. He was convicted of the main charge and sentenced to 10 years' imprisonment. Being dissatisfied with the determination of the trial Court, the appellant filed this appeal challenging both conviction and sentence. However, when this appeal came up for hearing on 15th July 2020, the appellant decided to withdraw the appeal on both conviction and sentence and urged the Court to consider the period he was in remand in computation of sentence imposed. He said he was in remand for 2 years before the matter was concluded in the trial Court.

4. I take note of the fact that the appellant was convicted of **defilement of a girl age 13 years**. This falls under **Section 8 (3) of the Sexual Offences Act** which provide sentences for defilement of a child aged between 12 and 15 years. The section provides for a minimum sentence of 20 years' imprisonment. The sentence imposed against the appellant herein was 10 years. This way below the minimum sentence provided. I believe the trial magistrate was guided by the decision of the Supreme Court in the case of **Muruatetu** which declared mandatory minimum sentences unconstitutional. By imposing half the minimum sentence provided by statute I believe she must have taken into consideration circumstances of this case including the fact that the appellant was in remand for the 2 years the case proceeded for hearing.

5. In view sentence imposed was very lenient and I decline to interfere. Application to compute the 2 years' remand period in the sentence imposed is not allowed.

6. FINAL ORDERS

1. Appeal is hereby marked as withdrawn.
2. Applicant to compute remand period in the sentence is hereby dismissed.

Ruling dated, signed and delivered via zoom at Nakuru This 30th day of July, 2020

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RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Rita for State

Appellant in person