



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

HCCRA NO.234 OF 2013

BENARD KMNGETICH RONO.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant was charged with the offence of **defilement contrary to Section 8(1) (2) of the Sexual Offences Act**. Particulars are that on the 30th day of September 2012 at [particulars withheld] Village in Kuresoi District of Nakuru County within Rift Valley he intentionally and unlawfully caused his penis to penetrate the vagina of **MC** a child aged 7 years.
2. The alternative charge was the offence of **committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No.3 of 2006**. Particulars are that on the 30th day of September 2012 at [particulars withheld] village in Kuresoi District of Nakuru County within Rift Valley Province, accused intentionally touched the vagina of **MC** a child aged 7 years with his penis.
3. The appellant denied both the main and alternative charge. The case proceeded for hearing. He was convicted of the main charge and sentenced to life imprisonment. Being dissatisfied and aggrieved by the decision of the trial court, the Appellant filed this appeal against both conviction and sentence. On 19th May 2020 when the matter came up for hearing, the appellant informed the court he does not wish to challenge the conviction; that he agreed with the trial court's determination on conviction and wished to have his sentence reduced to 10 years.
4. The appellant stated that he was 27 years old when the sentence was passed and was jailed for 15 years in 2013; that he has served for a period of 8 years and is now remaining with 3 years. He stated that he was not married at the time he was jailed and he wishes to go back to the society to start life. He added that he has trained as a Carpenter and has Grade I, II and III Certificates.
5. In response the state counsel **Ms. Rita Rotich** submitted that **Section 8 (2) of the Sexual Offences Act** provide for life imprisonment; she urged the Court to take into consideration the fact that the child was of tender years; that the act done by the appellant against the minor was inhuman leading to severe psychological trauma and pain. She prayed for the sentence to be enhanced.
6. In response the appellant stated that the sentence is okay and prayed that it be retained but the period in remand be considered. He said he was in remand for a period of one year.

ANALYSIS AND DETERMINATION

7. I note from the record that upon conviction and sentence of the appellant herein, he filed appeal number **Nakuru HCCRA No.102 of 2016** and following the appeal, in view of the decision in **Francis Karioko Muruatetu Vs Republic [2017] eKLR** the sentence of life imprisonment was reduced to 15 years' imprisonment.
8. This appeal having been registered in 2013 was filed earlier but it seems the appellant filed **Appeal No.102 of 2016** later but was heard and determined before this appeal. During the hearing, the appellant confirmed during the hearing that he was jailed for 15 years.
9. The appellant stated that he is satisfied with the sentence of 15 years' imprisonment but wishes to have the remand period be considered in computation of sentence. Whereas I do agree that the appellant has taken advantage of opportunities available in prison to acquire skills to enable him eke a living and be of benefit to the community out of prison, I have considered the fact that the child defiled was 7 years and jail term of 15 years minus the remand period is reasonable. I do believe the Court must have considered the remand period when considering

reduction of sentence from life imprisonment to 15 years.

10. From the foregoing, I decline the applicant's request to have remand period considered in computation of sentence.

11. FINAL ORDER

1. The applicant's prayer for remand period to be computed in the 15 years' sentence is dismissed.

2. Applicant to serve the remainder of the sentence imposed in HCCRA.No.102 OF 2016.

Judgment dated, signed and delivered via zoom at Nakuru This 23rd day of July, 2020

.....

RACHEL NGETICH

JUDGE

In the presence of:

Schola - Court Assistant

Appellant in person present

Rita for State