



**REPUBLIC OF KENYA**

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

**CORAM: D.S MAJANJA J.**

**CRIMINAL APPEAL NO. 66 OF 2018**

**BETWEEN**

**KELVIN KIRUI .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from the original conviction and sentence of Hon. R.M Oanda– PM dated 14<sup>th</sup> May 2018 at the Principal Magistrate’s Court at Kilgoris in Criminal Case No.949 of 2017)**

**JUDGMENT**

1. The appellant, KELVIN KIRUI, pleaded guilty to the offence of defilement contrary to **section 8(1) and (3) of the Sexual Offences Act, (‘the Act’)**. He was sentenced to 15 years imprisonment. The particulars of the offence were that;

On 20<sup>th</sup> August 2017 to 5<sup>th</sup> October 2017 within the Republic of Kenya, he intentionally and unlawfully penetrated his penis into the vagina of a girl aged 15 years namely MW.

2. After his arraignment, the court heard the testimony of the child (PW 1) and her mother (PW 2). After this, the appellant indicated to the court that he wanted to change the plea. The charges were read over to him and he pleaded guilty. The matter was stood over to another date and when the facts were read to him. He admitted the facts read to him. The court also warned him of the seriousness of the offence but he maintained his guilty plea before the conviction was entered. He was therefore sentenced to serve 15 years imprisonment.

3. I am satisfied that in view of the proceedings, the appellant guilty plea was unequivocal. In fact in mitigation he stated that:

“I took her as my wife and stayed with her for 6 months. I spoke to her parents and we agreed. I pray to the court to forgive me. I took her as my wife.”

4. Nothing therefore emerged from the mitigation that would warrant setting aside the plea of guilty. I therefore find and hold that the appellant was properly convicted.

5. As regards the sentence, 15 years imprisonment is the mandatory minimum sentence under section 8(3) of the Act. The child’s age was proved by the facts accepted by the appellant. Since the child was 15 years old, the sentence was within the law and cannot be varied since it was the mandatory minimum sentence.

6. The appeal is dismissed for the reasons I have explained above.

**Dated and delivered at Kisii this 15<sup>th</sup> day of March 2019.**

**D.S MAJANJA**

**JUDGE**

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.