

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CRIMINAL APPEAL NO.36 OF 2018

(Appeal Originating from Nyahururu CM's Court SOA.42 of 2018

by: Hon. S.N., Mwangi – S.R.M.)

ISAAC WANGOMBE THUMBI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

Isaac Wangombe Thumbi, the appellant, was charged with the offence of defilement contrary to section 8(1) as read with Section 8(3) of the Sexual Offences Act.

The particulars of the charge are that on diverse dates between 15th and 19th April, 2018 in Ndaragwa Sub County, Nyandarua County, intentionally and unlawfully caused his penis to penetrate the vagina of CNE a child aged 14 years.

He was charged with an alternative charge of committing an indecent act contrary to section 11(1) of the Sexual Offences Act. When he was arraigned before the court, he pleaded guilty to the principle charge, was convicted and sentenced to serve 20 years imprisonment.

He filed this appeal challenging both conviction and sentence. However, when the appellant appeared before the court for hearing of the appeal, he informed the court that he still admits the charge and all he was requesting the court is to reduce his sentence or give him a noncustodial sentence. He therefore abandoned his appeal on conviction.

The appeal was opposed by learned counsel for the State, Mr. Maroro, who submitted that the sentence is under Section 8(3) Sexual Offences Act which provides that where the victim is between 12 – 15 years, one is liable to a minimum sentence of 20 years and the court has no discretion to reduce it.

I have considered the grounds of appeal and the opposition thereto. Indeed the appellant pleaded guilty to the offence and did not waste the court's time. He did not say anything in mitigation. He was not remorseful at the time of sentence nor is he remorseful even now. He faced a very serious charge whereby he detained a child and repeatedly defiled her. He was given the minimum sentence under Section 8(3) of the Sexual Offences Act. This court has no discretion to give a lesser sentence. I find no merit in the appeal. I affirm the sentence and dismiss the appeal.

Dated, Signed and Delivered at **NYAHURURU** this **30th** day of **April**, 2019.

R.P.V. Wendoh

JUDGE

PRESENT:

Rugut – Prosecution Counsel

Soi- Court Assistant

Appellant