



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL APPEAL NO. 38 OF 2018

(CORAM: R.E. ABURILI – J.)

GOO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This matter was due for judgment delivery today. The Appellant **GOO** who was the Accused person in Ukwala Principal Magistrate's Court Criminal Case No. 33 of 2017 was convicted and sentenced to serve 15 years imprisonment for the offence of **defilement of a child aged 15 years**.
2. He also faced the alternative Count of **Committing an indecent Act with a Child contrary to Section 11(1) of the Sexual Offences Act**.
3. He further faced a second count of **incest contrary to section 20(1) of the Sexual Offences Act**.
4. The appeal was canvassed by the Appellant through written submissions. He also highlighted the same. The appeal was opposed by the Prosecution.
5. The Court then retired to write the judgment which was written and ready for delivery today on 26th June 2019.
6. However, as I was perusing the proceedings and judgment of the trial Court, I discovered that the trial Court did not sentence the Appellant on the second count of incest. Therefore, as the first appellate Court, I have the power to sentence the Appellant on the said count. I therefore felt obliged to notify the Appellant that I was inclined to sentence him on the second count.
7. On hearing this, the Appellant urged the Court to allow him to withdraw his appeal in its entirety.
8. As the Prosecution had no objection and as the withdrawal would not prejudice any party, I allowed the withdrawal of the entire appeal and ordered that the Appellant do serve the full sentence imposed on him being 15 years imprisonment.
9. Accordingly, this appeal is hereby marked as wholly withdrawn, judgment is arrested.

Dated, Signed and Delivered at Siaya This 26th day of June, 2019.

R.E. ABURILI

JUDGE

In the presence of:

Appellant in person.

Mr. Okachi Senior Principal Prosecution Counsel for State

