



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 83 OF 2018**

**GILBERT WAFULA CHILILA alias YORIYORI..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the Judgment, conviction and sentence dated 24<sup>th</sup> August 2018 in criminal case no. SOA 3 of 2017 in the Senior Principal Magistrate's court at Kimilili, R. –vs- Gilbert Wafula Chilila alias Yori Yori)*

**J U D G M E N T**

The Appellant has appealed against conviction and sentence of twenty (20) years imprisonment in respect of the offence of defilement of a child contrary to section 8(1)(3) of the Sexual Offences Act No. 3 of 2006. In his petition of appeal to this court the appellant has raised 5 grounds. All those grounds are in relation to the sentence, which he states is harsh and excessive in the circumstances of this case.

In ground 3, the appellant has stated that he is married with children who solely depend on him for all their provisions. It is for these reasons that he seeks the intervention of this court to impose a lenient sentence.

In his sentencing notes the trial court took into account that the appellant was a first offender, and that he was a poor person. The court then proceeded to impose the mandatory minimum sentence of twenty (20) years imprisonment.

In imposing the sentence, the court fell in error in law in finding that its hands were tied to impose the said sentence. In view of the Supreme Court decision in **Francis Muruatetu & Another .vs. R (2017) eKLR** the trial court was not bound to impose the minimum sentence. This court is therefore entitled to interfere with sentence imposed.

In deciding which is the appropriate sentence to impose this court has to take into account both the mitigating and aggravating factors. The mitigating factors include the following. The appellant was a first offender. Furthermore, the appellant has been in custody since 29<sup>th</sup> June, 2017, which translates to about one (1) year and nine (9) months. The court is bound to take into account the custody period by virtue of the provisions of **section 333(2) of the Criminal Procedure Code (Cap 75) Laws of Kenya**.

The aggravating factors include the following. The victim of the crime is aged 16 years.

After taking into account both the mitigating and aggravating factors, I find that the appropriate sentence is imprisonment to eight (8) years, which now the appellant has to serve.

Judgment signed, dated and delivered at Bungoma this 9th day of August, 2019 in the presence of the appellant and Ms Nyakibia for the Respondent.

**J. M. Bwonwong'a.**

**J U D G E**

**9<sup>th</sup> August, 2019.**