

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

[Coram: A. C. Mrima, J.]

CRIMINAL APPEAL NO. 45 OF 2018

FREDRICK OCHIENG NYASORO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

SENTENCE

1. The Appellant herein was formally charged with Defilement. He was tried, found guilty and convicted accordingly. He was sentenced to life imprisonment.
2. The Appellant lodged an appeal on conviction and sentence. By a judgment rendered on 19/09/2019 the appeal on conviction was dismissed, but the appeal on sentence allowed.
3. Mitigations were tendered. Counsel for the Appellant urged this Court to note that penetration was proved in the technical sense and if any it was only to very surface. Counsel urged this Court to consider the proportionality and the gravity of the offence in sentencing. He also referred this Court to two persuasive decisions.
4. A Pre-Sentence Report was called for and produced.
5. I have carefully considered the circumstances in this matter. The victim was 8 years old. I am alive to the fact that the medical evidence in essence absolved the Appellant from any sexual engagement with the victim. From the examination it was opined that the victim had lost her virginity long before the day she encountered the Appellant. However, the Appellant was found guilty mainly on the basis of the evidence of the victim.
6. The Appellant was charged on 26/06/2018. He has been in custody since then. I have perused the Pre-Sentence Report. Prior to the incident the Appellant was of very high social standing. The community was surprised by the allegations. The family of the victim and that of the Appellant are in talking terms, but they never discuss the issue.
7. By taking into account the principles of sentencing, the circumstances of the case and the Pre-Sentence Report, I would have placed the Appellant on a non-custodial sentence. However, I note that there still is some animosity between the family of the victim and that of the Appellant over the matter. I find it prudent to separate the Appellant from the community for a while.
8. The Appellant is hereby sentenced to 5 years' imprisonment. The sentence shall run from the date the Appellant was charged before the trial court, that is on 26/06/2018.

It is so ordered.

DELIVERED, DATED and SIGNED at MIGORI this 27th day of November 2019.

A. C. MRIMA

JUDGE