



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL MISC APPL NO.24 OF 2019

JOSEPH AVIDA ADOLI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The appellant herein was charged with the offence of defilement contrary to **section 8 (1) as read with section 8 (3) of the sexual offences Act No.3 of 2006**. Particulars are that on diverse dates between March 2016 and September 2016 in Nakuru County, the appellant intentionally and unlawfully committed an act by inserting a male organ namely penis into the female genital organ namely vagina of **RMW** a child aged 10 years which caused penetration.
2. The appellant was also charged with alternative count of **indecent act with a child contrary to section 11(1) of the sexual offences Act No.3 of 2006**. Particulars are that on diverse dates between March 2016 and September 2016 in Nakuru County, the appellant intentionally and unlawfully committed an indecent act with a child namely **RMW** a child aged 10 years by touching her private part vagina with his genital organ namely penis.
3. After hearing in the lower court, the appellant was convicted and sentenced to 20 years imprisonment. Being aggrieved by the decision of the trial court, the appellant filed appeal on both conviction and sentence.
4. On 16th September 2019, the appellant informed the court that he wished to withdraw appeal on both conviction and urged court to reduce the sentence.
5. In response the state counsel submitted that the child defiled was 10 years and she would give the appellant notice of enhancement of sentence to life imprisonment.
6. The court gave the appellant time to consider whether he wished to withdraw the appeal. On 19th September 2019 the appellant requested for 3 days to make up his mind.
7. On 9th September 2019, the appellant applied to withdraw appeal on conviction. He also stated that he was satisfied with the sentence but prayed that it commences from the day he was arrested. Record show that the appellant was arrested on 30th September 2016.
8. There is no doubt that the child defiled was 10 years old section 8 (2) provide that a person who commits an offence of defilement with a child aged 11 years or less shall upon conviction be sentenced to imprisonment for life.

9. The appellant herein was sentenced to 20 years imprisonment. He has opted not to pursue the appeal on sentence imposed. The state has not filed appeal on enhancement and in view of withdrawal of appeal by appellant they have lost opportunity to pursue enhancement of sentence. There is no doubt that in view of the age of the complainant the sentence imposed against the appellant is very lenient and I see no reason to allow computation of term from the time he was arrested. The application is not merited.

10. FINAL ORDERS

1. Application to withdraw appeal on conviction and sentence is allowed.

2. Application to compute sentence from date for arrest is dismissed.

Ruling dated, signed and delivered at Nakuru this 17th day of December, 2019.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:-

Schola/Jenifer - Court Assistants

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