



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KABARNET**

**HCCRA NO. 63 OF 2017**

*[Formerly Eldoret HCCRA NO. 41 of 2017]*

**KAMAMA KOLE .....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**JUDGMENT**

1. The Appellant was on 4/2/2016 convicted and sentenced to imprisonment for 20 years for the offence of defilement Contrary to Section 8(1) (3) of the Sexual Offence Act. The Court finding that the complainant was a minor aged 13 years.

2. In his appeal, the appellant by what he called Memorandum of Mitigation sought that the court reduces his “term of 20 years solid as I do not enjoy the benefit of remission and award me a much reasonable sentence to enable me go back and realize my dreams/reconciliation as I prayed for.” He alleges that his family and the family of the complainant are willing to embrace reconciliation.

3. The DPP opposed the appeal citing the mandatory nature of the sentence under section 8 (3) of the Sexual Offence Act, which provides for a penalty of a minimum of 20 years imprisonment.

4. Section 8(3) of the Sexual Offence Act is in terms as follows:-

***“(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”***

5. Paragraph 7.17 of the Kenya Judiciary sentencing policy Guidelines on mandatory minimum sentences provides that:-

***“Where the law provides mandatory minimum sentences, then the court is bound by those provisions and must not impose lower than what is prescribed [see *Kennedy Munga v. R* [2011] eKLR]. A fine shall not substitute a term of imprisonment where a minimum sentence is provided.”***

6. The provision in the Policy Guidelines is supported by case law such as *Kibirgen v. R* (1975) EA 250; *Kipsaina v. R* (1975) EA 252; *Mfundo v. R* (1975) EA 63; *Desai v. R* (1971) EA 416; *Njuguna v. R* (1972) EA 494; *Kimanzia v. R* (1972) EA 495.

7. The Court has no discretion whether to award minimum sentence or reduce it. It is duty bound to pass the minimum or greater sentence according to the circumstances of the case in accordance with the

procedure of assessment of sentence set out in *Njuguna* and *Kimanzia supra*, and followed in *Kibirgen* and *Kipsaina, supra*.

8. For the reasons stated above, I find that the appellant's appeal against sentence herein has no merit and the same is dismissed.

**DATED AND DELIVERED THIS 17<sup>TH</sup> DAY OF JANUARY 2018**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances: -**

Appellant in person

Ms. Kenei for Prosecution.