



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 15 OF 2016

(Being an appeal arising from conviction and sentence in Criminal case No. S.O. No. 46 of 2015 delivered by P. Biwott Senior Principal Magistrate on 15/2/2016)

ROBERT BWANYA NDEGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of **defilement** Contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that **on diverse dates between 1st March 2014 and 26th February 2015 in Trans Nzoia County, intentionally caused his penis to penetrate into the vagina of H.W. a child aged 11 years.**
2. He was charged with the alternative charge of **Committing an Indecent act with a child contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006.** The particulars were that **on diverse dates between 1st March 2014 and 26th February 2015 in Trans Nzoia Count, intentionally caused the contact between his penis and vagina of H.W. a child aged 11 years.**
3. When this matter came up for hearing of the appeal, the appellant chose to mitigate instead.
4. I have perused the grounds he has raised in his mitigation which include the fact that he was a young man with a young family of a wife and child, that he had learned his lesson etc.
5. I have equally perused the trial courts proceedings entirely and I do not think that the appellant was going to succeed in any event in the appeal. By defiling an 11 year old girl not once but severally was to say the least callous and premeditated.
6. The appeal is hereby dismissed. Let the appellant serve the sentence as ordered by the trial court.

Delivered, signed and dated at Kitale this 12th day of April 2018.

H.K. CHEMITEI

JUDGE

12/4/18

In the presence of:

Mr Kakoi for the State

Appellant – present

Court Assistant – Kirong

Judgment read in open court.