

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 23 OF 2015

BETWEEN

WKK.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. A.K Mkoross – SRM dated 4th March 2015 at the Principal Magistrate’s Court at Kilgoris in Criminal Case No. 643 of 2013)

JUDGMENT

1. The appellant, WKK, was charged and convicted of the offence of defilement contrary to **section 8(1) and (4)** of the Sexual Offences Act. The particulars of the offence were that on diverse dates between 27th July 2013 and 14th August 2013 within Narok County, he caused his penis to penetrate the vagina of DCC, a child aged 16 years. He was sentenced to 15 years imprisonment.
2. At the hearing of the appeal, learned counsel for the prosecution drew the court’s attention to the age assessment report dated 19th January 2015 which showed that the appellant was 19 years old at the time of conviction. This means when he was charged, in 2013, he was 16 years old and therefore a child within the meaning of the Children Act. He ought to have been sentenced accordingly under **section 191(1)** thereof.
3. The evidence before the trial court is that the complainant and the appellant were living at his parents’ house as man and wife even though they were children. At the hearing the appellant did not contest the conviction. He asked the court to review the sentence in view of his age at the material time.
4. As the appellant was a child when he committed the offence and was charged, I allow the appeal and quash the sentence. As the appellant has been in prison for 3 years 8 months, I sentence him to time served. The appellant is set free unless otherwise lawfully held.

Dated and delivered at Kisii this 29th day of November 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.