

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 57 OF 2017

(From Original Conviction and Sentence in Criminal Case No. 787 of 2007 of the Senior Resident Magistrate's Court at Mumias)

DAVID AKHWALE MALALA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The appellant was convicted by Hon. EK Makori, Acting Principal Magistrate (Ag PM), Mumias, of defilement contrary to Section 8(1) of the Sexual Offences Act No. 3 of 2006, and was accordingly sentenced to twenty (20) years imprisonment. He had also been charged with an alternative charge of indecent assault. The appellant pleaded not guilty to the charges before the trial court, whereupon the primary court had to conduct a trial. The prosecution called eight (8) witnesses. After reviewing the evidence, the trial court convicted appellant of the main charge of defilement contrary to Section 8(1) of the Sexual Offences Act, and sentenced him accordingly.

2. The appellant being dissatisfied with the conviction and sentence has appealed to this court and raised several grounds of appeal. I have perused through the grounds listed. I note that the appellant does not attack the judgement and does not invite the court to review the evidence and overturn the outcome. His grounds amount a plea to mitigation of sentence. He pleads for leniency and for reduction of sentence, says that his health has deteriorated during incarceration and asks the court to consider giving him a non-custodial sentence. He says that he is remorseful, has reformed and has undergone spiritual transformation, and has acquired knowledge and skills that would make him a useful member of the community.

3. There is clearly no appeal before me. I need not therefore task my mind considering whether or not I ought to interfere with the conviction and sentence imposed by the trial court. The matters raised by the appellant are not suitable for appeal. He should perhaps consider taking advantage of the provisions of the Community Service Orders Act No. 10 of 1998. I need not say more. The appeal herein is dismissed for the reasons stated.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF DECEMBER, 2018

W MUSYOKA

JUDGE