



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CRIMINAL APPEAL NO.178 OF 2017**

**(Appeal Originating from Nyahururu CM's Court Cr.No.1645 of 2014 by: Hon. V. A. Ochanda – R.M.)**

**STEPHEN KIAGO WANJIRU.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

**Stephen Kiago Wanjiru** was convicted by Hon. Ochanda R.M. for the offence of defilement Contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act.

The particulars of the charge are that on diverse dates between 20<sup>th</sup> and 26<sup>th</sup> June, 2014, at Laikipia County, intentionally and unlawfully caused his penis to penetrate the vagina of JM a girl aged 16 years.

He faced an alternative charge of committing an indecent act Contrary to Section 11(1) of the Sexual Offences Act. No finding was made on the alternative charge.

The appellant was sentenced to serve 15 years imprisonment.

The appellant's grounds of appeal are as follows:

- (1) That the age of the complainant was not proved;***
- (2) That there was no medical evidence to prove that the complainant was defiled;***
- (3) That the appellant was not subjected to examination and no medical evidence linking him to the offence;***
- (4) That the offence was not proved to the required standard.***

At the hearing of the appeal, the appellant abandoned the appeal on conviction and intimated that he only wanted to proceed with mitigation; that the court should reduce his sentence.

The appeal was opposed by Ms. Rugut, Counsel for the State, for reasons that the sentence of 15 years is lawful, being the minimum sentence under Section 8(4) of the Sexual Offences Act and that the court cannot interfere.

After the conviction, the appellant told the court '***niko sawa, sina malilio***' meaning, '***am good, I have no mitigation***'. On appeal, he now requests that the court reduces his sentence. The appellant was said to be a first offender. However, the appellant was charged under Section 8(1) as read with Section 8(4) of the Sexual Offences Act. Upon conviction under Section 8(1) of Sexual Offences Act, the sentence is provided for Under Section 8(4) and one is liable to a minimum sentence of 15 years. The appellant was handed the minimum sentence and this court has no discretion to reduce it. For that reason, the appeal lacks merit and is hereby dismissed.

**Dated, Signed and Delivered at NYAHURURU this 19<sup>th</sup> day of December, 2018.**

**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Mr. Mutembei – Prosecution Counsel

Soi - Court Assistant

Appellant – Present in person