



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 74 OF 2017

JOHN NJICHE KARANJA.....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

*(Being an appeal from the original conviction and sentence in the Chief Magistrates' Court at Thika Criminal Case No. 4071 of 2010 delivered by Hon. L. Wachira, SRM on 7<sup>th</sup> April, 2010).*

JUDGMENT

The Appellant was charged with defilement contrary to **Section 8(2) of the Sexual Offences Act No. 3 of 2006**. The particulars of the offence were that on the 22<sup>nd</sup> April, 2010 at [particulars withheld] Village, Ruiru Township within Kiambu County, intentionally and unlawfully inserted his penis into the vagina of E.W. a child aged 15 years. In the he was charged with an indecent act contrary to **Section 11(1) of the Sexual Offences Act No, 3 of 2006** in that he intentionally touched the genitals of E.W. a child aged 15 years.

The Appellant was convicted on the main charge and sentenced to serve twenty years imprisonment. He appealed only against the sentence. In his grounds of appeal dated and filed 25<sup>th</sup> July, 2017, he pleads that the sentence was manifestly harsh and excessive, that the trial court failed to take into account the five months he spent in custody before passing the sentence, that he is since remorseful and is ready to spend the rest of his life in more gainful occupation and that the court has the discretion to reduce the sentence imposed.

In opposing the appeal, learned State Counsel, Miss Sigei submitted that the sentence provided under **Section 8(3) of the Sexual offences Act** is in mandatory terms and that the court had no discretion whatsoever to upset it. She noted that the offence was serious and that the Appellant defiled a child who would otherwise have referred to him as a father. He should therefore have bestowed parental guidance to the complainant but instead converted her to a wife for a period of two months. She reiterated that the sentence was legal and urged the court to dismiss the appeal.

The Appellant was convicted under **Section 8(3) of the Sexual offences Act** which provides that:

***“a person who commits an offence of defilement with a child between the age of 12 and 15 years is liable upon conviction to imprisonment for a term of not less than 20 years.”***

The provision is in no uncertain terms couched in mandatory terms in so far as imposition of a minimum sentence of not less than 20 years is concerned. Therefore, both the trial and the appellate court cannot upset the mandatory minimum sentence set out. In the circumstances, notwithstanding the Appellant's mitigating factors through which he pleads for leniency, this court cannot disturb the sentence imposed. However, I have perused the record of proceedings and noted that since the Appellant was first produced in court on 13<sup>th</sup> October, 2010 until the date of his conviction on 7<sup>th</sup> April, 2011, he was throughout in remand. The period tabulates to 5 months and 23 days. These are days that this court has powers to credit to his custodial sentence.

In the result, the appeal fails both on conviction and sentence and I entirely dismiss it. However, the aforestated period of 5 months and 23 days shall be reduced from his imprisonment term. It is so ordered.

**Dated and Delivered at Nairobi this 27<sup>th</sup> day of September, 2017.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of;**

- 1. Appellant present in person.*
- 2. Miss Kimiri for the Respondent.*