



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 4 OF 2015

MUTINDA MASILA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Being an appeal from the original conviction and sentence in **Kitui Chief Magistrate's Court Criminal Case No. 52 of 2015** by **Hon. E. Boke P M** on 27/07/15)*

J U D G M E N T

1. **Mutinda Masila**, the Appellant, was charged with the offence of **Defilement** contrary to **Section 8(1)** as read with **Section 4** of the **Sexual Offences Act No. 3 of 2006**. Particulars of the offence were that on **12th day of July, 2015** at about **9.00 p.m.** within **Kitui County**, intentionally and unlawfully caused his penis to penetrate the vagina of **K M** a child aged **17 years**.
2. In the alternative he was charged with the offence of **Committing an Indecent Act with a Child** contrary to **Section 11(1)** of the **Sexual Offences Act No. 3 of 2006**. Particulars of the offence were that on the **12th day of July, 2015** at about **9.00 p.m.** within **Kitui County**, intentionally and unlawfully committed an act of indecency with **K M** a child aged **17 years** by touching her private parts namely breast, vagina and buttocks with his hands.
3. When arraigned before the court the substance of the charge was read to him. He pleaded guilty to the charge. Facts giving rise to the case were that on **12th July, 2015** the Complainant went to where the Appellant was washing clothes from. He took her to his house where they engaged in coitus. The Appellant promised to marry her. Thereafter, on the **14th July, 2015** they were seen at **Kwa Vonza** and arrested by members of Community Policing Agency. The Complainant was subjected to examination and found to be pregnant. Her age was assessed, it was established to be **17 years** hence the case.
4. The appeal herein is against sentence. In his mitigation on sentence the Appellant has stated that he is **34 years old**, a person of a young generation and is ready to build up the nation. He is not married but has brothers and sisters who depend on him.
5. In addition to grounds upon which he filed the memorandum seeking leniency he stated that he was beaten thoroughly hence admitting the charge.
6. The State through **Ms. Amojong**, learned State Counsel opposed the appeal. She argued that the plea is unequivocal. She called upon the court to note that the Appellant admitted the charge. The age of the girl was **17 years old** and there was proof of defilement. Further, she stated that the sentence meted out was the minimum sentence provided by the law.

7. In the case of **Ogola s/o Owoura vs. Reginum (1954) 21,270** it was held thus:

“The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are firmly established. The court does not alter a sentence on mere ground that if the members of the court had been trying the Appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge, unless, as was said in James vs. Republic (1950) 18 E.A. CA 147

“It is now settled law that sentence is a matter of discretion of the trial court and must be based on the facts and circumstances of each case. An appellate court will normally not interfere with sentence unless the sentence is manifestly excessive or is based on wrong principles.”

8. Section 8(4) of the Sexual Offences Act provides:

“A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.”

9. The sentence meted out in the circumstances was the minimum sentence provided by the Act. Consequently the learned trial Magistrate did not misdirect herself in imposing the sentence of **15 years imprisonment**.

10. In the result, the appeal that lacks merit is dismissed.

11. It is so ordered.

Dated, Signed and Delivered at Kitui this 22nd day of September, 2016.

L. N. MUTENDE

JUDGE