

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 284B OF 2013

MICHAEL OBANDO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from conviction and sentence in Thika CM Criminal Case NO 2420 of 2005 - S M Mokuu, SRM)

J U D G M E N T

1. The Appellant was charged in the main count of **defilement of a girl under the age of 16 years** contrary to **section 145(1)** (since repealed) of the **Penal Code**. He was also charged in the alternative with **indecent assault** contrary to **section 144(1)** (also since repealed) of the same Code. After trial he was acquitted of the main charge but was convicted of the alternative charge. On 16th November 2006 he was sentenced to serve **20 years imprisonment**. He has appealed against both conviction and sentence.
2. At the hearing of his appeal on 27th April 2015 the Appellant abandoned his appeal against conviction and chose to proceed only with the appeal against sentence.
3. Learned **Senior Principal Prosecution Counsel**, Mr. Njeru, stated that whereas he supports the conviction he does not support the sentence. He pointed out that the maximum sentence provided for the offence under section 144(1) (since repealed) of the Penal Code was **five years imprisonment with hard labour with or without corporal punishment**. The sentence of 20 years imprisonment meted out to the Appellant was therefore patently illegal.
4. Learned prosecution counsel has properly conceded the appeal against sentence. The sentence imposed upon the Appellant by the trial court was not the sentence provided for by the law for the offence that he stood convicted of. It was an illegal sentence.
5. I will in the event allow the appeal against sentence, but to the limited extent only that the sentence of 20 years imprisonment meted out to the Appellant by the trial court is hereby set aside. I will substitute therefor a sentence of **5 years imprisonment**, the same to run from the date of sentencing - that is 16th November 2006. This of course means that the Appellant has long served his lawful sentence. It is unfortunate that he has been languishing in prison for a number of years now serving an illegal sentence. He shall be set at liberty forth unless otherwise lawful held. It is so ordered.

DATED AT MURANG'A THIS 29TH DAY OF APRIL 2015

HPG WAWERU

JUDGE

DELIVERED THIS 30TH DAY OF APRIL 2015