

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

REVISION NO. 2 OF 2014

REPUBLIC.....PROSECUTION

VERSUS

ERICK ABENJA OYIEGO.....APPLICANT

RULING ON REVISION

Erick Abenja Oyiego, hereinafter referred to as the Applicant, was tried and convicted for the offence of defilement of a girl contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act No. 3 of 2006**. The particulars of the offence were that on the 5th day of January 2012 between 6.30am and 5.00pm in Kericho District of the Rift Valley Province intentionally and unlawfully caused his penis to penetrate the vagina of **V K** a child aged five years. The Applicant was sentenced to serve twenty (20) years imprisonment.

Pursuant to the provisions of **Section 363** of the **Criminal Procedure Code** the proceedings leading to the Applicant's conviction and sentence were placed before this court by Hon. Kiniale, learned Ag. Senior Resident Magistrate to peruse and satisfy itself as to the correctness, legality or propriety of the decision. I have carefully perused the aforesaid proceedings and it is apparent that the applicant was convicted and sentenced for the offence defined under **Section 8(1)** of the **Sexual Offence Act No.3 of 2006**. The learned Ag. Senior Resident Magistrate sentenced the applicant to serve twenty (20) years imprisonment. Under **Section 8(2)** of the **Sexual Offences Act No. 3 of 2006**, the law prescribed a mandatory life imprisonment. Having noticed that the sentence meted out was illegal I called upon both the office of the Director of Public Prosecutions and the Applicant to be heard before the sentence could be corrected pursuant to the provisions of **Section 364(2)** of the **Criminal Procedure Code**. Mr. Mutai, learned Senior Prosecution Counsel pointed out that the sentence meted out was illegal hence this court should correct the same in exercise of its supervisory power of revision. The applicant who appeared in person merely stated that he is ready to serve the sentence pronounced by the trial court. It would appear he was opposed to any proposal to alter the sentence. I have already stated that the sentence of twenty (20) years imprisonment meted out by the learned Ag. Senior Resident Magistrate was incorrect. The victim of the Sexual Offence is said to be a child aged five (5) years. The trial Magistrate was enjoined by law to sentence the applicant to life imprisonment. Under **Section 364(1) (a)** of the **Criminal Procedure Code**, this court is mandated to correct the sentence pursuant to the provisions of **Section 354 (3)(b)** of **Criminal Procedure Code**. In exercise of the aforesaid supervisory jurisdiction of revision, I hereby set aside the order sentencing **Erick Abenja Oyiego** to twenty (20) years imprisonment and substitute it with an order sentencing him to serve life imprisonment.

Dated, signed and delivered in open court this 26th day of June, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Miss. Kivali for Director of Public Prosecutions

Applicant Present in Person