



No. 427/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL 299 OF 2013

**BOSCO WAMBUA NZIVO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(Being an appeal from the original conviction and sentence in Mutomo Resident Magistrate's Court Criminal Case No. 115 of 2012 by Hon. S.K. Mutai, R.M on 26/9/2012)**

JUDGMENT

1. The appellant, **Bosco Wambua Nzivo** was charged with the offence of defilement contrary to Section 8(1) as read with **Section 8(3)** of the **Sexual Offences Act No. 3 of 2006**. The particulars of the offence being that on diverse dates between **8<sup>th</sup> April, 2013** and **21<sup>st</sup> June, 2013** at **[Particulars Withheld] Village**, in **Kathiani District** within **Machakos County**, intentionally and unlawfully caused his penis to penetrate into the vagina for **N M** a girl child aged 15 years.
2. He was convicted on his own plea of guilty. He now mitigates on sentence.
3. In his grounds of appeal he states that:-
  - i. The sentence was harsh and excessive
  - ii. His mitigation was not considered
  - iii. He is remorseful
4. At the hearing the learned State Counsel **Mrs Abuga** opposed the appeal on grounds that the sentence meted out was legal.
5. In the case of **Diego versus Republic [1985KLR 62]**. It was held thus:-

***“The appellate court should not interfere with the discretion of a trial judge as to sentences except in such case where it appears that in assessing sentence the judge acted on wrong principles”.***

6. The appellant was charged with defilement contrary to **Section 8(1)** as read with **Section 8(3)** of the **Sexual Offences Act**. The minimum prescribed sentence is **twenty (20)** years imprisonment. This means that the sentence meted out was not within the law. However, since the State has not sought enhancement of the same this court will affirm the one imposed by the Lower Court. The appeal therefore has no merit. Accordingly, it is dismissed.

**DATED, SIGNED and DELIVERED at MACHAKOS this 30<sup>th</sup> day of OCTOBER, 2014.**

**L.N. MUTENDE**

**JUDGE**