



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Revision 64 of 2013

(From Original Conviction and Sentence in Criminal Case No. 23 of 2011 of the Chief Magistrate's Court at Mombasa – E. Michieka (Ag. PM))

ATG..... APPLICANT

- Versus -

REPUBLIC RESPONDENT

RULING ON REVISION

ATG was convicted and sentenced to 13 years imprisonment for the offence of defilement of a child contrary to Section 8(1) as read with Section 8(3) of Sexual Offences Act No. 3 of 2006.

The particulars are that on the 25th day of March 2011 at Samburu Trading Centre Samburu Location within Kwale County, unlawfully and intentionally committed an act which caused penetration of his male genital organ namely penis into the female organ namely vagina of D.M.Y a child aged 15 years.

The case proceeded to hearing and upon determination and conviction the Accused was sentenced to 13 years imprisonment. It is not in dispute that at the time of the commission of this offence the Accused was seventeen years old.

Section 2 of the Children's Act defines a child as-

“Any human being under the age of eighteen years.”

Section 190 of the Act provides that-

“No child shall be ordered to imprisonment or to be placed in a detention camp.”

Section 191 of the Children's Act goes on to provide for methods of dealing with child offenders one of them being the making of a Probation order against the offender.

In the present case a Probation Report was called for an same was availed to the Court. A perusal of the report shows that the Accused was likely to benefit from a non-custodial sentence.

The learned trial Magistrate brushed aside the recommendations without much ado.

I find the sentence of 13 years imprisonment on the Accused who was 17 years old was improper or

illegal and under powers conferred on me under Section 364 of the Criminal Procedure Code, I revise the sentence of 13 years imprisonment to three years probation placement.

Production order to issue for 22nd May, 2013.

Ruling read and delivered in open Court this 22nd day of May, 2013.

M. MUYA
JUDGE

In the presence of:-

Mr. Oyodo for the State

The Applicant - present

Court clerk – Mr. Musundi