



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 114 OF 2011

ABDI TADICHA GALGALOAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case No.133 of 2008 of the Principal Magistrate's Court at Marsabit)

J U D G M E N T

The appellant ABDI TADICHA GALGALO was charged with an offence of defilement of a girl contrary to Section 8(1)(4) of the Sexual Offences Act No.3 of 2006. The appellant faced count II of indecent Act with a child contrary to section 11 (1) of the Sexual Offences Act No. 3 of 2006.

The appellant pleaded not guilty to both counts. That upon hearing the trial court convicted the appellant and sentenced him to serve 15 years imprisonment on Count 1 and on Count II 10 years. Sentence to run concurrently.

The appellant being aggrieved by the conviction and sentence preferred this appeal. The appellant is seeking his sentence to be reduced on the ground that it was excessive.

The appellant abandoned appeal against conviction but proceeded with appeal against sentence.

Mr. Ongige, learned State Counsel opposed the appellant's appeal.

He urged that under Section 8(4) of the Sexual Offences Act No.3 of 2006 the sentence provided for is a term of not less than fifteen years. He urged that the trial Magistrate sentenced the appellant to the minimum period provided under the law.

I have noted that as the complainant in this case was one, the second count should not have been termed as such but as an alternative count. The appellant having been convicted on the main count the trial court should not have proceeded to convict the appellant on the alternative count. The sentence in respect of the alternative count being 10 years is therefore set aside for being unlawful.

Under Section 8(1) and (4) of the Sexual Offences Act it is provided:-

***“8. (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.*”**

***(4) 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.***

In the result the sentence imposed upon the appellant on the main count was the minimum period provided by law. It was lawful sentence. Consequently the appeal is dismissed.

Right of Appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 28th DAY OF OCTOBER,2013.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:-

1. Appellant in person

2. Mr. Ongige for the State

J. A. MAKAU

JUDGE