



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 226 OF 2009

SALIM MWENDA SHABANAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case No.1296 of 2007 of the Principal Magistrate's Court at Chuka)

J U D G M E N T

The appellant SALIM MWENDA SHABAN was charged with an offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006.

The trial court heard the case and convicted the appellant as charged. The trial Magistrate after mitigation sentenced the appellant to serve fifteen(15) years imprisonment.

The appellant being aggrieved by the conviction and sentence preferred this appeal. The appellant is seeking his to be reduced on the grounds that the sentence was excessive. The appellant abandoned the appeal against the conviction and persued appeal against sentence only.

Mr. Ongige, learned State counsel opposed the appellant's appeal on the sentence on the ground that the sentence imposed in this case was lenient.

He urged that under Section 8(2) of the Sexual Offences Act No.3 of 2006 the sentence provided for is life imprisonment. He urged that the trial Magistrate was very lenient to sentence the appellant to serve 15 years instead of life imprisonment. He argued the appellant had defiled a girl aged 7 years and urged the court to dismiss the appeal.

Under Section 8(1) and (2) 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.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

Section 8(2) of the Sexual Offences Act provides for a person who commits an offence of defilement with

a child aged 11 years or less upon conviction to be sentenced to imprisonment for life.

The word used under the said section is shall, which means the sentence to be imposed on conviction is life imprisonment. The appellant is lucky in that the trial court did not impose upon him life sentence and further the state did not apply for enhancement of the sentence.

In the result the sentence imposed upon the appellant is very lenient so the appeal against the sentence fails and 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