

(From original conviction and sentence in Criminal Case No. 204 of 2010 of the SPM's Court at Naivasha – T. W. C. Wamae, SPM)

GEORGE GATHERE GICHORA.....APPELLANT

**VERSUS
REPUBLIC.....RESPONDENT**

JUDGMENT

The Appellant was charged and convicted of the offence of defilement of a girl contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act, 2006 (No. 3 of 2006) and sentenced to ten years imprisonment.

Aggrieved both with his conviction and sentence he appealed to this court and in both his initial appeal "Mitigation Appeal" filed on 25th October 2011 and "Supplementary Grounds of Appeal" filed on 19th December 2011, the appellant sets out five grounds of appeal which is a plea to the court to reduce his sentence to a minimum so that "I can go back to my home at the earliest time possible to fend for my family." The appellant's appeal becomes essentially one on sentence only.

When he urged his appeal, the appellant reiterated his plea for a non-custodial sentence. He pleaded that he is an orphan, and he desires to go home to serve his brothers and the Kenya Nation. There are children his parents left him with and his only desire is to cater for and serve them.

However, his appeal was opposed by the State Counsel, Mr. Omari who submitted that the sentence was proper as the law provided only for one sentence.

The appellant as already stated, was charged under the provisions of Section 8(1) as read with Section 8(4). The appellant accepts his conviction under Section 8(1) of the Sexual Offence Act – a person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

Under Section 8(4), if the defilement is committed with a child between the age sixteen and eighteen years of age the accused is liable upon conviction to imprisonment for a term of not less than fifteen years.

The appellant was sentenced to 10 years imprisonment. The Sexual Offences Act is a strict liability statute, and punishment thereunder is upon a graduated scale depending upon the age of the victim, the subject of the defilement.

The punishment for defilement of a child between the age of sixteen and eighteen years is a term not less than fifteen years. The sentence of ten years imposed by the trial magistrate was contrary to statute.

This court is vested with discretion under Section 353(b) of the Criminal Procedure Code, (Cap. 75, Laws of Kenya) on an appeal against, sentence, to either increase or reduce the sentence or alter the nature of the sentence.

The appellant has called for the alteration of the nature of the sentence from custodial to non-custodial. I am unable to exercise this discretion in favour of the appellant. The law regarding punishment for Sexual Offences is clear. It is strict. The only discretion this court has is to increase the sentence which I hereby do from ten to fifteen years as by law prescribed.

The appeal is dismissed, and sentence altered as stated above.

It is so ordered.

Dated, signed and delivered at Nakuru this 27th day of July, 2012

**J. ANYARA EMUKULE
JUDGE**