



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU

Criminal Appeal 225 of 2009

JOSEPH NYAGA NDUNGU.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT.

The Appellant, **JOSEPH NYAGA NDUNGU**, was charged with defilement contrary to **Section 8(1)(b)** of the **Sexual Offences Act**. He was in the alternative charged with indecent act with a child contrary to **Section 11(1)** of the same Act. He pleaded not guilty but after the testimony of three prosecution witnesses, he changed his plea to one of guilt on the main charge. He was thereupon convicted and sentenced to 20 years imprisonment. He appealed against both the conviction and sentence. However, at the hearing, he abandoned the appeal against conviction and pleaded for the reduction of sentence describing it as harsh. He also submitted that he is a 19 year old boy who has a younger sister to take care of. Mr. Mugambi for the state left the matter of sentence to me.

I have considered the mitigating circumstances put forward by the Appellant. My hands are, however, tied. **Section 8(1)(b)** of the **Sexual Offences Act** under which the Appellant was charged provides for a mandatory life imprisonment for defiling a child aged 11 years or below. The defiled girl in this case was only 8 years old. The sentence of 20 years imprisonment the trial court meted out to the Appellant in this case is therefore illegal. In the circumstances, I hereby set it aside and sentence the Appellant to life imprisonment.

DATED and DELIVERED at Nakuru this 20th day of July, 2010.

D. K. MARAGA
JUDGE.