



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL APPEAL 334 OF 2007**

**SAMSON GITHINJI MWITI .....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Appeal from original Conviction and Sentence of the Senior Principal Magistrate's Court at Nanyuki in Criminal Case No.1849 of 2007 by R.N. MURIUKI)***

**J U D G M E N T**

**Samson Githinji Mwit**i, hereinafter referred to as “*the appellant*” was on 19<sup>th</sup> August, 2005 arraigned before the Senior Principal Magistrate’s Court, Nanyuki on one count of Defilement of a girl contrary to *section 145 (1)* of the Penal Code. He also faced an alternative count of indecent assault on a female contrary to *Section 144 (1)* of the Penal Code. The appellant pleaded guilty to the charges and was tried. At the conclusion thereof the appellant was convicted on the main count. Upon conviction, he was sentenced to 25 years imprisonment.

Aggrieved by the aforesaid conviction and sentence, the appellant lodged the instant appeal and set out the following grounds of appeal.

**“1. That I had pleaded not guilty to the charges.**

**2. That your lordship the imposed sentence of 25 years for the offence of defilement are (sic) extremely excessive could (sic) the same be intended for rehabilitation and even for deterrent for rehabilitation or punishment for less than one year is enough and satisfactory.**

**3. That your lordship the decided sentence of 25 years need (sic) mitigation for the complainant wasn’t serious (sic) affected by the act and that still serving (sic) in good all (sic) conditions.**

**4. That your lordship the preferred sentence of 25 years remains devastating in regard I have been a person of good character through out my life whilst evidence of good character is admissible in respect of section 56 evidence act, Cap 80.**

When the appeal came up for hearing, the appellant elected to abandon the appeal on conviction. He now wished to proceed with the appeal on sentence only. His wish was duly granted, **Mr. Makura**, the senior state counsel not objecting. In support thereof, the appellant submitted that that the sentence imposed was manifestly harsh and excessive. He had reformed and was now a born again Christian. He was a gospel singer. Finally he submitted that when he committed the offence, he was under the influence of bhang and alcohol.

**Mr. Makura**, elected to leave the issue to the discretion of the court.

As has been constantly stated, sentencing is a matter for the discretion of the trial court. The discretion must however, be exercised judicially. The trial court must be guided by evidence and found legal principles. It must take into account all relevant factors and exclude all extraneous or irrelevant factors – See generally **Republic Vs Batista Liboni Beni C.A. No.65 of 2004 (U.R)**.

The appellant was sentenced to 25 years imprisonment. This was after mitigation was taken into account and indeed the circumstances of the case. As at that time the maximum sentence for defilement was life imprisonment with hard labour. The appellant was a first offender. He was therefore not a serial defiler to attract such heavy sentence. No doubt the offence was serious considering the age of the complainant. It would appear from the record that though the appellant had been granted bond, he was unable to meet the terms and thus remained in custody all through his trial. It would appear the learned magistrate did not take into account this aspect of the matter when pondering over the appropriate sentence to impose. In my view though the sentence was legal, it was manifestly excessive and harsh, considering too the age of the appellant. The appellant has since learned his lesson. He has reformed and become a born again Christian.

Considering all the foregoing, I am inclined to interfere with the sentence. Accordingly, I would set aside the sentence of 25 years imprisonment imposed on the appellant, and substitute therefor a sentence of 10 years imprisonment effective from the date of conviction. To that limited extent, the appeal on sentence succeeds.

***Dated and delivered at Nyeri this 31<sup>st</sup> day of July, 2009.***

**M.S.A. MAKHANDIA**

**JUDGE**