REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 147 of 2006

KIMANI MWANGI GACHOKA .....…… APPELLANT

VERSUS

REPUBLIC ……...……. RESPONDENT

(Appeal from the original Judgment & Conviction in the Senior Principal Magistrate's Court at Murang'a in Criminal Case No. 1540 of 2005 dated 16th June 2006 by

T.W. MURIGI – S.R.M.)

J U D G M E N T

This Appeal is on sentence only. The Appellant was convicted after a full trial for the offence of defilement of a girl under 14 years contrary to *section 145(1)* of the Penal Code. Upon conviction he was sentenced to life imprisonment.

The appellant was aggrieved by the conviction and sentence and hence lodged the instant appeal. However when the appeal came up for hearing, the appellant indicated to the court that he was no longer pursuing the appeal on conviction. The appellant would however pursue the appeal on sentence. **Mr. Orinda**, learned Principal State Counsel did not oppose the request. Accordingly the request was granted. The appeal thereafter proceeded on sentence only.

In support of the appeal on sentence, the appellant submitted that the sentence imposed was too harsh and excessive, that he had already served two years of the term which he considered sufficient punishment. **Mr. Orinda** conceded also that the sentence imposed was excessive.

As it has been constantly stated, sentencing is an exercise in discretion by

the sentencing court. Accordingly unless it is shown that the discretion was not exercised judicially but rather capriciously, the Appellate Court would rarely interfere with such exercise in discretion. Further it has also been held that the appellate Court would only interfere with the sentence imposed if it is demonstrated to its satisfaction that it is illegal, manifestly harsh and excessive, that in arriving at the sentence, the sentencing Court took into account irrelevant or extraneous matters and failed to take into account relevant matters. See generally **Ogala S/O Owuora V Republic (1954) EACA 270, Nilson V Republic (1970) EA 599 and Wanjema V Republic (1971) EA.493.**

The sentence imposed on the appellant no doubt is legal. However it would appear to be harsh and manifestly excessive as it is the maximum sentence permissible for the offence that the appellant was convicted of. The appellant was a first offender and not a serial defiler. There was no justification at all for the maximum sentence imposed. Regarding imposition of maximum sentences by the trial courts the court of appeal had this to say in the case of **George Otieno Oloo V Republic, KSM C.A No.137 of 2004** (unreported)

".....**Of late, we have noted a trend where maximum and manifestly harsh sentences are being imposed by trial courts on wrong factual basis. Though it is the duty of the court to protect the public and punish and deter the criminal, the trial courts must adopt a uniformity of approach……"**

The maximum sentence imposed was wholly unjustified. It was manifestly harsh and excessive. It therefore calls for my intervention. Accordingly I reduce the sentence of life imprisonment to five (5) years imprisonment to be served with hard labour to run form date of conviction. These are orders of this court in the appeal.

Dated and delivered at Nyeri this 10th day of June, 2008.

M. S. A. MAKHANDIA

JUDGE