

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 138 of 2007

PAUL CHEFUKWI ALIAS MUNGOO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of defilement of a girl contrary to Section 8(3) of the Sexual Offences Act of 2006. The particulars of the offence state that on diverse dates between 24th March 2007 and 26th March 2007 at [*particulars withheld pursuant to section 76 (5) of the Children Act, 2001*] the appellant unlawfully had carnal knowledge of B.W., a girl of 12 years of age. The appellant was convicted on his own plea of guilt and sentenced to 30 years imprisonment. The facts were read to him. He confirmed that they were correct. Upon conviction he pleaded for leniency.

The learned State Counsel submitted that the conviction was proper but the sentence of 30 years was unreasonable. The appellant was charged under **Section 8(3)** of the **Sexual Offences Act**; since the complainant was aged 12 years the sentence prescribed by law is 20 years. The State Counsel submitted that the court should impose the appropriate sentence.

This being a first appeal, this court has a duty to re-evaluate the evidence before the trial court and arrive at its own independent determination on whether or not to uphold the conviction and sentence. In so doing the court should bear in mind that it never saw or heard the witnesses and give due allowance for that. See the case of **Njoroge vs. Republic [1987] KLR 19.**

This appeal turns only on sentence. The charge was properly read to the appellant, he pleaded guilty. The facts were clearly stated to him and he confirmed that they were correct. That is when he was convicted and sentenced. The facts are that on 24th day of March 2007, at about 8.00 p.m. the appellant lured the complainant a young girl aged 12 years into his house. He locked her in his house and defiled her for two nights continuously. On 26th march 2007, the appellant left the complainant in the house. He went to Marmanet Trading Centre and bought for her a new dress and pair of rubber shoes. He subsequently released her and warned her not to tell anybody.

When the complainant went home she narrated to her mother what had happened. The matter was reported to the Police Station and the complainant was taken to Nyahururu District Hospital. A P3 form shows that the complainant's hymen was perforated. She was also discharging pus from the vagina carnal. She was put on ARV treatment. Based on those facts, the appellant was convicted and sentenced to 30 years imprisonment. The appellant was charged under the **Sexual Offences Act. Section 8(3)** provides:

“(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

I find there is reason to interfere with the sentence imposed by the trial court. The appeal in respect of the sentence succeeds. The sentence of 30 years is set aside and substituted with the sentence of 20 years.

It is so ordered.

Judgment read and signed on 14th November, 2008

M. KOOME

JUDGE