

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 85 of 2008

MWANGI KAMAU.....RESPONDENT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

MWANGI KAMAU, the Appellant, was upon his own plea of guilty to the charge of incest by a male contrary to Section 20(1) of the Sexual Offences Act No. 3 of 2006, (the Act) convicted and sentenced to 30 years imprisonment. He has appealed to this court against that sentence pleading for its reduction on the ground that he has children who have been left with nobody to take care of them. Mr. Gumo for the state left the issue of sentence to me.

The lower court record does not show the age of the victim. That is important because the proviso to Section 20(1) of the Act states that if the victim is less than 18 years old then the Accused shall, on conviction, be liable to life imprisonment. In the case of victims over that age, the minimum sentence stated is 10 years imprisonment. I do not know if the learned trial magistrate, while sentencing the Appellant, had that distinction in mind and that he took it into account. In the circumstances I give the benefit of that doubt to the Appellant and reduce the sentence to 15 years imprisonment.

DATED and delivered at Nakuru this 11th day of December, 2008.

D. K. MARAGA

JUDGE.