

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CRIMINAL APPEAL NO. 117 OF 2019

DENNIS WAFULA NYONGESA..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the conviction and sentence by Hon G.A OLLIMO (R.M) in original Kimilili Law Courts S.O case No. 1/2018 delivered on 18th July, 2019]

JUDGEMENT

The appellant herein was arraigned in the subordinate court to answer to a charge of defilement contrary to section 8(1)(3) of the Sexual Offences Act, 2006. The particulars were that on the 24th December, 2017 in Kimilili Sub County of Bungoma County, intentionally caused his penis to penetrate the vagina of SW, a child aged 13 years.

The appellant faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act, 2006. Particulars being that on the 24th December, 2017 in Kimilili Sub County of Bungoma County, intentionally touched the vagina of SW, a child aged 13 years.

The appellant pleaded not guilty to the charge whereupon the prosecution called a total of 7 witnesses. The court found him with a case to answer, put on his defence and he gave unsworn evidence. He was found guilty and sentenced to serve 10 years in prison. Dissatisfied, the appellant preferred the instant appeal challenging both the conviction and sentence.

However in the submissions filed before the court, the appellant abandoned the initial grounds and now seeks a review of the sentence. He submits that he is a lay person and beseeches the court to be lenient. That he is remorseful and now a mediator in prison. That he is an orphan.

Section 8(1) and (3) of the Sexual Offences Act, 2006 states;

(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(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.

The court has considered the record and the law creating the offence. The maximum sentence provided for is a prison term of not less than twenty years.

The court is mandated to apply the law as it is, of course subject to the mitigation tendered. From the record, the court is satisfied that trial court considered the mitigation tendered and the impact caused to the victim. The trial court in fact called for and considered the Probation Officers' report together with the appellants' age which is 18-20.

In the circumstances of this appeal, the appellant was sentenced to a term of 10 years imprisonment. The court was lenient in its sentencing. The court finds no merit in the appellant's contention that the court was harsh.

The court has also considered the sentencing policy guidelines. There is need to deter the appellant from committing similar acts as well as punish him for the offence he committed. I find no merit in this appeal which is hereby dismissed.

DATED AT BUNGOMA THIS 11TH DAY OF FEBRUARY, 2022.

S. N. RIECHI

JUDGE