REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

HIGH COURT CRIMINAL APPEAL NO. 150 OF 2019

JAMES WAFULA WANYONYI.....APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

(Appeal against sentence of Hon. G. Adhiambo -PM – Kimilili Court)

J U D G E M E N T

1. **James Wafula Wanyonyi** the Appellant admitted having defiled the complainant, a minor aged 15 years old. He was convicted and sentenced to fifteen (15) years imprisonment.

2. Now, he appeals against the sentence. In his written submissions he urged the court to consider his age, alleged to be 20 years, the fact of being a first offender, his character; that he pleaded guilty to the charge, is remorseful and was committed to the victim of the offence. He Acknowledged having sired a child with the minor and sought to be granted the opportunity to raise him.

3. The appeal was opposed by the Respondent/State. On legality of sentence meted out, it called upon the court to correct the anomaly of the sentence and also find that the appeal lacked merit.

4. There was an encounter between the complainant and the appellant who engaged in coitus. As a result, she conceived and bore a child who is acknowledged by the appellant. However, the complainant having been a minor it was a case of defilement.

5. This court has been called upon to interfere with the sentence meted out by the trial court which it can only do if the court fell into error by applying wrong principles. In the case ***of Benard Kimani Gacheru -vs Republic : Criminal appeal No. 188 of 2000*** the court of appeal stated that:-

> **" It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."**

6. Section 8(3) of the Sexual Offences Act provides thus :

> **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.**

In the case of **Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR,** the Supreme Court reviewed the **Muruatetu** case. It clarified that the principle that was set declaring the mandatory death sentence unconstitutional was only applicable to murder cases. This means that the minimum and mandatory sentences provided by the Sexual Offences Act are applicable.

7. In the circumstances, the appeal lacks merit. Accordingly, it is dismissed.

8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT BUNGOMA THIS 10TH DAY OF SEPTEMBER, 2021

L. N. MUTENDE

JUDGE

10.9.2021