



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL APPEAL NO. 4 OF 2019

JULIUS ODONGO NGICHO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in S.O.A case No. 23 of 2018 of the

Chief Magistrate's Court at Homa Bay by Hon. Susan Ndegwa–Principal Magistrate)

JUDGMENT

1. Julius Odongo Ngicho, the appellant herein, was convicted of the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act No. 3 of 2006.
2. The particulars of the offence are that at unknown date in July, 2018 at Gem West location, Rangwe sub County within Homa Bay County, intentionally and unlawfully caused his penis to penetrate the vagina of AO, a child aged 11 years.
3. The appellant was sentenced to life imprisonment. He was aggrieved and filed this appeal against the sentence.
4. The appellant raised grounds of appeal as follows:
 - a) That he was not in right state of mind during plea agreement; and
 - b) That he was not aware of the dire consequences of the offence.
5. The appeal was opposed by the state though no grounds or submissions were filed.
6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32**.
7. There was no plea bargaining agreement as alluded to by the appellant. The matter went to full hearing and the learned trial magistrate found him guilty on the evidence on record.
8. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of **Nilsson vs. Republic [1970] E.A. 599**, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

9. Section 8 (2) of the Sexual Offences Act provides as follows:

A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to

imprisonment for life.

10. The prescribed sentence is mandatory and any other sentence would be illegal. I therefore have no basis to interfere with the sentence. The appeal is therefore dismissed.

DELIVERED AND SIGNED AT HOMA BAY THIS 2ND DAY OF NOVEMBER, 2021

KIARIE WAWERU KIARIE

JUDGE