



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

CRIMINAL APPEAL NO. E075 OF 2021

BETWEEN

JOSEPH MUNYUA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence by Hon. M.A ODHIAMBO RM

in MERU Law Court in criminal S.O No. 54 of 2019

delivered on 12th August 2020)

JUDGMENT

The Trial

1. **JOSEPH MUNYUA** (*Appellant*) has filed this appeal against sentence and conviction on a charge of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act No. 3 of 2006 (**the Act**). The offence was allegedly committed on 6th day of November 2019 against **E.K** a child aged 10 years.
2. When the matter came before this court on the 30.11.2021, Appellant asked that the days spent in remand be considered.

Analysis and Determination

3. Section 333(2) of the Criminal Procedure Code provides that:

(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

4. It is worthy to note that the Appellant having been convicted under Section 8(2) of the Act was liable to be sentenced mandatory imprisonment for life. The court record shows that he was saved that mandatory sentence for the reason that he is advanced in age.
5. Appellant should count himself lucky that he was not given notice of enhancement of sentence for had he been warned; I would not have hesitated to enhance it. For now, I decline the invitation to vary the sentence meted by the trial magistrate.
6. This appeal has no merit and it is dismissed.
7. These orders shall apply to **CRIMINAL APPEAL NO. E095 OF 2021.**

DELIVERED AT MERU THIS 02ND DAY OF DECEMBER 2021

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Appellant - Present in person

For the State - Ms. Mwaniki