



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE- J.)

PETITION NO.04 OF 2020

BETWEEN

JOHN OMONDI OGUTU.....PETITIONER

AND

REPUBLIC.....RESPONDENT

JUDGMENT

Introduction

1. **JOHN OMONDI OGUTU, (*Petitioner*)** was sentenced on 20.11.12 to 20 years' imprisonment in **TAMU CRIMINAL CASE NO. 211 OF 2012**, for the offence of defilement contrary to Section 8(1) as read with section 8(3) of the **Sexual Offences Act No. 3 of 2006**. He filed an appeal vide **KISUMU HCCRA 133 OF 2012** and by a judgment dated 31.10.13, his conviction and sentence were upheld.
2. The Petitioner has petitioned this court for resentencing. He has served 8 years within which time he has obtained Grades I, II and III in both masonry, and carpentry and joinery.
3. Ms. Gathu, Senior Prosecution Counsel for the state appreciated that the Petitioner had prepared himself for integration with the public and recommended that the Petitioner be resented to 15 years.

Analysis and Determination

4. In **Dismas Wafula Kilwake v Republic [2018] eKLR**, the Court of Appeal observed as follows:

[W]e hold that the provisions of section 8 of the Sexual Offences Act must be interpreted so as not to take away the discretion of the court in sentencing. Those provisions are indicative of the seriousness with which the Legislature and the society take the offence of defilement. In appropriate cases therefore, the court, freely exercising its discretion in sentencing, should be able to impose any of the sentences prescribed, if the circumstances of the case so demand. On the other hand, the court cannot be constrained by section 8 to impose the provided sentences if the circumstances do not demand it. The argument that mandatory sentences are justified because sometimes courts impose unreasonable or lenient sentences which do not deter commission of the particular offences is not convincing, granted the express right of appeal or revision available in the event of arbitrary or unreasonable exercise of discretion in sentencing.

5. Even though Appellant was a first offender, the psychological effect of the offences on the 14-year-old complainant cannot be underestimated.
6. As stated hereinabove, the Appellant has served 8 years. He has also been rehabilitated and prepared himself for life outside prison. I sentence him to **12 years** from the date of conviction on **20th November, 2012**.

DELIVERED THIS 14th DAY OF April 2020

T. W. CHERERE

JUDGE

Court Assistants- Ms. Amondi/Ms. Okodoi

Petitioner - Present

For the State - Mr. Onanda

Order

This judgment has been delivered to the parties via video conferencing (skype) due to measures restricting court operations due to the COVID -19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March, 2019.