



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL REVISION NO.96 OF 2020**

**PETER GITHINJI MAGANJU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Revision of the Original Sentence dated 29.09.2018 in Nanyuki*

*Sexual Offence Case No.32 of 2016– L. Mutai, CM)*

**21.05.2020**

Before Justice H P G Waweru

In Chambers

**ORDER ON REVISION**

**Upon request for revision by letter dated 06.05.2020 (and filed in court on 13.05.2020) by the Convict's Advocates -**

1. I have examined the record of the trial court.
2. The Convict was convicted after trial of *Defilement of a Child* contrary to Section 8(1) & (4) of the *Sexual Offences Act, No.3 of 2006*.
3. On 29.09.2018 the Convict was sentenced to serve fifteen (15) years imprisonment.
4. The conviction was based upon good and sound evidence, and the offence charged was proved beyond reasonable doubt. It matter not that at the time of commission of the offence the "Complainant" was 16 years old. She was still a child under the law. It also mattered not that it was her who requested for sexual intercourse from the Convict.
5. As for the sentence, this case presented very unique circumstances. The Convict, who was then aged about 21 years, was in a love relationship with the "Complainant". I used the term "Complainant" in quotes because it was not the girl who complained of being defiled but her father.
6. The Convict was arrested and charged after the girl became pregnant. The child was born in the course of the trial. By then the couple were already living together as husband and wife at the home of the Convict's parents. The child is called **PM**.
7. When the Convict was sentenced the couple was already expecting their second child, who was born thereafter. This second child is called **VM**.
8. This court has been further informed that the two children and their mother are being taken care of by the Convict's father, who has to take care also of the Convict's mother and siblings.
9. During the trial the girl's love for the Convict was obvious. She even denied that he defiled her.
10. The girl's second pregnancy was not brought to the attention of the trial court. The first child's existence, however, was part of the

evidence placed before the trial court.

11. In sentencing the Convict, the trial court was duty bound to take into account the glaring special circumstances that existed in this case –

*i) The love relationship between the Convict and the girl.*

*ii) The fact that at the time of conviction the girl was already an adult, and that they were living as husband and wife.*

*iii) The fact that there was now another life in the mix – the child born to them, who would benefit immensely from the continued relationship of marriage between his parents.*

12. The trial court did not consider any of these special circumstances. It focused only on punishing the Convict, not realizing that in meting out the sentence it did, both the child born of the relationship, and the girl herself, would suffer immensely by the imprisonment of the Convict.

13. And now this court has been informed that there is a second child born of the relationship between the Convict and the girl!

14. It is in the interest of the welfare of these two children that their father participates in bringing them up. They are not responsible for the illicit sex between their underage mother and the Convict as a result of which they were born!

15. The continued imprisonment of the Convict cannot be in the best interest of the welfare of these two children, nor indeed of their mother.

16. For the reason given above, I will set aside the sentence of fifteen (15) years imprisonment meted out to the Convict, and substitute therefor a sentence equivalent to the time that the Convict has already served.

17. That means that the Convict, **PETER GITHINJI**, shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AT NANYUKI THIS 21<sup>ST</sup> DAY OF MAY, 2020**

**H.P.G. WAWERU**

**JUDGE.**

**DEPUTY REGISTRAR**

**NANYUKI HIGH COURT**