



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAMIRA**

**CRIMINAL APPEAL NO. 7 OF 2020**

**CLIFF SIBANO MATOKE.....-APPELLANT**

**=VRS=**

**THE REPUBLIC.....RESPONDENT**

*{Being an appeal against the Judgement of Hon. W. C. Waswa (Mr.) – RM Nyamira dated and delivered on the 30<sup>th</sup> day of May 2019 in the original Nyamira Chief Magistrate’s Court Sexual Offence No. 18 of 2018}*

**JUDGEMENT**

The appellant together with another, not party to this appeal, were on 21<sup>st</sup> June 2019 sentenced to a term of imprisonment for twelve years for the offence of gang defilement contrary to Section 10 of the Sexual Offences Act. His appeal is confined to the sentence as can be discerned from the five grounds in the petition and in his written submissions. In the petition which is headed **MITIGATION OF APPEAL** he states: -

**“1. That your lordship I pleaded guilty at trial.**

**2. That your lordship I am remorseful to this offence as joined a wrong company that lead to commit the offence am now rehabilitated I pray your Hon court to review my 12 years sentence or give non custodial sentence.**

**3. That your lordship I am first offender and I did not understand the seriousness of the offence I was accused.**

**4. That your lordship I am the bread winner to my family and even my parent rely on me.**

**5. That your honour I promise to be a good citizen and ambassador of peace and promise to observe human rights and law when this honourable court may consider my prayer.”**

The grounds are reiterated in the written submissions where in paragraph two he states: -

**“That your lordship although satisfied with the sentence and conviction am too remorsefully to this offence and to the complainant as I am rehabilitated here in the prison after joining with the church that has proved to me that I did a bad mistake to the complainant and to the law at large as the bible says ask for forgiveness and it will be granted to you.”**

The appeal is vehemently opposed as according to Senior Prosecution Counsel Desmond Majale, all the ingredients of the offence were proved beyond reasonable doubt and the minimum sentence provided for the offence is fifteen years imprisonment whereas because of his plea in mitigation the appellant was sentenced to only twelve years imprisonment. This court was urged to uphold the sentence in order to fully rehabilitate the appellant and so that he can understand the seriousness of his actions.

In the case of **Wagude v Republic [1983] KLR 569** the Court of Appeal held that: -

**“The appellate court may interfere with the sentence only if it is shown it was manifestly excessive.....”**

I have considered the grounds of appeal and the submissions by both sides and I agree with Learned Prosecution Counsel that given the nature and circumstances of this offence the sentence meted against the appellant is neither harsh nor excessive. The victim of the appellant’s heinous conduct was barely seventeen years old and from the trauma she underwent, as narrated in her testimony, the sentence prescribed for the offence cannot match the crime. Not only did the appellant and his co-accused defile her but they also took her to a house

where they watched her being defiled by their friend at knife point. Accordingly, I find no merit in this appeal and it is dismissed.

**Signed, dated and delivered in Nyamira this 1<sup>st</sup> day of October 2020.**

**E. N. MAINA**

**JUDGE**

*Judgement delivered virtually via Microsoft Teams*