

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 55 OF 2019

ERICK OKOTH DIGOLO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against Conviction and Sentence on judgment delivered on 22.7.2019 in Ukwala Senior Magistrate's Court Criminal Case No. 16 of 2019 before Hon.C.N. Sindani - Principal Magistrate.)

JUDGMENT

1. The appellant **Eric Digolo Odera** was convicted of the offence of **Defilement contrary to Section 8(1)(3) of the Sexual Offences Act**. He pleaded guilty to the charge and facts. The victim was aged 14 years. In his mitigation the appellant said the victim was big in size so he thought she was old enough. He was sentenced to serve a 15 years imprisonment under **Section 8(3) of the Sexual Offences Act**. He appealed to this Court on 5.8.2020 claiming the plea was unequivocal and that sentence of 15 years imprisonment meted was unconstitutional.

2. During the giving of directions on appeal the appellant has urged the Court to only consider reducing for him sentence and that he is not challenging his conviction.

He has mitigated saying he is orphaned and cares for his aged grandmother and siblings.

3. The prosecution does not oppose consideration of sentence reduction.

Having considered the submission by the appellant and the Respondent's Counsel on sentence reduction, I observe that the sentence imposed was lawful and below the mandatory 20 years imprisonment. In view of the mitigations and the fact that the appellant is a young man 24 years old and regrets the offence for which he was convicted and sentenced to maximum 15 years imprisonment and he has saved the Court's time hearing the appeal on merits, and although the sentence imposed was lawful.

4. I hereby exercise discretion and considering the age of the complainant and appellant, I hereby set aside the sentence of 15 years imprisonment resentence the appellant to serve 10 years imprisonment to be calculated from the date of arrest on 14.7.2019.

5. File closed

6. Orders accordingly.

Dated, Signed and Delivered at Siaya this 5th day of October, 2020

R.E. ABURILI

JUDGE