



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL APPEAL NO. 98 OF 2017**

**ALEX OWINO OGWAYO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal against both the conviction and sentence dated 3.10.2017 arising from Siaya Misc. Application Case No 14 of 2017, Hon. J. Ongondo - PM)*

**JUDGMENT**

1. The appellant herein **Alex Owino Ogwayo** was charged, tried and convicted for the offence of **defilement contrary to section 8(1) and (3) of the sexual offences Act No. 3 of 2006**.
2. He pleaded not guilty. The Prosecution called, 4 witnesses including the minor complainant LAO. aged 13 years and PW4 Evalyne Odhuno the Clinical Officer who examined PW1 the complainant and confirmed that the minor was defiled.
3. The offence took place on 25.3.2017 at 3.00 p.m. at Asayi – sub-location in Gem sub-county in Gem sub-county of Siaya County
4. The complainant narrated her ordeal to the court on how she was at her home after her mother PW2 left for a funeral and the appellant herein sneaked in her home and asked her to accompany him to his house. She innocently did so. On arrival, he undressed her after forcibly pinning her on his bed and defiled her. When she screamed due to the pain he threatened to cut off her head. After he was done with defiling her, he told her to go get water and bath.
5. The trial Court which had the opportunity to see and hear witnesses as they testified against the appellant described him as a voracious vulture and a strong predator.
6. The appellant herein never cross-examined any of the prosecution witnesses indicative that all that they stated on oath was the truth which was never challenged.
7. Albeit in his defence he claimed that he was framed, he has on appeal sought to withdraw the appeal against conviction and challenges sentence only **Section 8 (1)** as read with;
8. **Section 8 (3) of the Sexual Offences Act** are clear that a person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than 20 years.
9. The appellant herein was sentenced to serve 20 years imprisonment upon conviction for defiling PW1 aged 13 years.
10. He has not challenged the conviction and during the hearing of this appeal, he stated that he admits committing the offence but that he wants the court to consider reducing the sentence.
11. The trial Magistrate had the option of sentencing the appellant to a longer prison sentence than the minimum of 20 years, but gave the bare minimum.
12. The sentence meted out was lawful, considering the age of the victim and the circumstances under which she was viciously defiled with threats to behead her.
13. The prosecution opposes the appeal and urges the court to uphold the sentence I agree.

14. Accordingly, as there are no new facts or mitigation to persuade this court to interfere with the lawful sentence, I hereby allow the appellant's application to withdraw the appeal against conviction, and I proceed to dismiss his appeal against sentence.

15. The appellant to serve full sentence.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT SIAYA THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2019.**

**R.E. ABURILI**

**JUDGE**