



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAMIRA**

**CORAM: D.S MAJANJA J.**

**CRIMINAL APPEAL NO. 41 OF 2018**

**ERICK OMOSA PIUS .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal from the original conviction and sentence of Hon. C.N Sindani – PM dated 21<sup>st</sup> May 2014 at the Principal Magistrate’s Court at Keroka in Criminal Case No. 527 of 2014)**

**JUDGMENT**

1. The appellant, ERICK OMOSA PIUS, was charged and convicted on his own plea of guilty for the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act. It was alleged that on 19<sup>th</sup> May 2014 in Borabu District within Nyamira County, he intentionally caused his penis to penetrate the vagina of a child aged 3 years.
2. The appellant now appeals against the conviction and sentence on the ground that the guilty plea was unequivocal.
3. I have read the proceedings and as the facts read that “the accused was found defiling the child.” It is clear that accused committed an act of penetration as there was a tear on the labia as shown in the P3 form. The child age was 3 years hence the particulars of the offence were established. I accordingly affirm the conviction as the guilty plea was unequivocal.
4. As regards the sentence, it is not clear whether the appellant was aged 18 years or below and this issue ought to have been established before the plea. The age of the accused was an issue which the trial magistrate failed to resolve. The accused is therefore given the benefit of doubt and is to be sentenced in accordance with section 191 of the Children’s Act particularly section 191(h) which allows the court to impose a lawful sentence. In view of the offence a prison term is appropriate (see **Daniel Langat Kiprotich v. State [2018]eKLR and Republic v. Dennis Kirui Cheruiyot [2014]eKLR**).
5. Since the offence is serious a prison term is warranted. Consequently, while I affirm the conviction, I sentence the appellant to 10 years imprisonment.

**Dated and delivered at Kisii this 5<sup>th</sup> day of April 2019.**

**D.S MAJANJA**

**JUDGE**

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.