



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL CASE NO. 101 OF 2017

(CORAM: R.E. ABURILI – J.)

MICHAEL ODHIAMBO DANIEL APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant **Michael Odhiambo Daniel** was convicted and sentenced by **Ukwala SRMs Court in Ukwala SRM Cr. Case No. 288/17** for the **offence of defilement of a Child Contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act**.
2. He appealed to this Court and filed his written submission challenging both conviction and sentence.
3. However, at the hearing of his appeal this morning the Appellant sought to withdraw his appeal against conviction.
4. He also urged the Court to only consider reducing his sentence to give him custodial sentence instead of life imprisonment.
5. Initially, he had relied on his written submission and the State represented by Mr. Okach Senior Principal Prosecution Counsel had opposed the entire appeal and urged the Court to uphold the conviction and sentence meted out on the Appellant.
6. The Appellant having withdrawn his appeal challenging his conviction by the trial Court, the only issue for determination is whether this Court has power to interfere with the sentence meted out on the Appellant.
7. The Child who was defiled was aged 6 years, according to the charge sheet and the age Assessment report produced as exhibits before the trial Court.
8. Under Section 8 (2) of the Sexual Offences Act, a person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
9. There is no other alternative sentence provided for in law. In addition, the trial Court meted out lawful sentence having regard to the tender age of the victim of the sexual assault and further, note that the Appellant was a 19 year old person capable of being a father to the 6 year old child.
10. I have examined the medical report of the victim. She was aged 6 years whereas the Appellant was a 19 year old. There is absolutely no justification for any person of sound mind to defile such a young child.
11. The makers of the Sexual Offences Act must have intended to banish such sex pests from the society completely hence the life imprisonment contemplated for convicts under **Section 8 (2) of the Sexual Offences Act**.
12. Unless and until the above provision of the law is amended to remove the minimum sentence, I have no reason, having regard to the circumstances of this case, to interfere with lawful sentence meted out by the trial Court on the Appellant Offender. The Appellant was accorded an opportunity to mitigate and the trial Court took into account those mitigations before sentencing him.
13. Accordingly, I dismiss the appeal as a whole. I uphold the conviction and sentence meted out on the Appellant by the trial Court.
14. The Appellant to serve his life in prison and ask the almighty God for forgiveness.

15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 3RD DAY OF APRIL, 2019.

R.E. ABURILI

JUDGE