

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 19 OF 2018

CLARKMAN OTIENO OKINDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against conviction and sentence of Bondo PMCCR No.27 of 2019 dated 9.3.2019 before Hon. M. Obiero – P.M.)

RESENTENCING

1. On 9.10.2019 this Court delivered judgment upholding the Appellant's Conviction by the trial Court.
2. On sentence, the Court ordered for a Social inquiry report after hearing mitigation by the Appellant. I also ordered for a victim impact statement.
3. However, the Probation Officer despite noting the file on 9.10.2019 has not availed any report on the Appellant. That notwithstanding, this Court is not bound by any report by the Probation Officer.
4. I have considered the fresh mitigations by the Appellant and the address by the Prosecution Counsel where he opposed the reduction of sentence. The Appellant is a first offender but the offence is traumatizing to the victim of the crime.
5. I also note that the Appellant has denied the offence throughout the trial and on appeal. I have considered the circumstances under which the offence was committed. The victim was a 17 year old child who became pregnant. The Appellant is her neighbour.
6. The Appellant is 31 years old and therefore ought to have known that a 17 year old cannot give consent to sexual intercourse. He has a family and he ought to have been more responsible and avoided committing such offence.
7. The 17 year old has been left to fend for a child because of being preyed upon by the adult sex pest. Deterrent sentence was called for but the Appellant was given minimum mandatory sentence. He has now served about 1 and half years in jail. On the authority of **Jared Koita Injiri v Republic [2019]e KLR**, I would exercise discretion and interfere with the sentence and substitute it with a prison term of 10 years to be calculated from the date when the Appellant was arrested and taken into custody on 8.7.2017.
8. The appeal against sentence therefore succeeds to that extent only.

Dated, Signed and Delivered at Siaya this 11th day of November, 2019.

R.E. ABURILI

JUDGE

In the presence of:

The Appellant in person

Mr. Okachi Senior Principal Counsel for the Respondent

CA: Brenda and Modestar