



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CRIMINAL APPEAL NO. 85 OF 2017**

**ERASTUS OMWONYA MADOWO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an application for appeal against sentence in Siaya PMCRA No. 85 of 2017***

***dated 5.9.2017 before Hon. T.O. Olando – S.R.M.)***

**RESENTENCE**

1. On 9.10.2019 this Court dismissed the Appellant's Appeal against Conviction and allowed the Appellant to mitigate afresh for resentence. The Court also ordered for a Social Inquiry Report and Victim Impact Statement and despite the file being noted on 9.10.2019 by the Probation Officer, there is no social inquiry report on Victim Impact statement filed in Court.

2. I have considered the mitigation by the Appellant. He is 66 years old and prays for a custodial sentence so that if he dies in prison he is taken home for burial.

3. He has 7 children who left with his estranged wife. A 66 year old save man defiling a 6 and half year child is an abomination in the society.

4. There is no justification for committing such an offence. The Appellant was bonded a mandatory minimum of life imprisonment. He is 66 years old. Life in prison was merited having regard to the age of the Complainant who was a neighbor's child. The Appellant deserves to be kept away from the society. He is a danger to the society. Let him make peace with God in prison.

5. I shall exercise discretion to resentence him to serve 80 (eight years) imprisonment as life imprisonment is so indefinite for a person of his age. The period shall be calculated from the date of his conviction and sentence in the lower Court on 5.9.2017.

6. Appeal against sentence allowed to that extend.

**Dated, Signed and Delivered at Siaya this 11<sup>th</sup> 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