



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 22 OF 2018 [SOA]**

**MOO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an Appeal from the conviction and sentence in a judgment dated 29.3.2018 delivered at Bondo Law Courts vide Criminal Case S.O. No. 38 of 2017 before Hon. M. Obiero – P.M.)***

**RESENTENCING**

1. On 17.8.2019 this Court delivered a judgment upholding the conviction of the Appellant by the trial Court for offence of defilement of a child aged 13 years. The Appellant was sentenced to serve 20 years imprisonment. before making a determination on the sentence, I gave the Appellant an opportunity to mitigate which he has done and stated that he has a family of a wife and 3 children who depend on him, that he is sickly, with TB, diabetes, asthma and is on medication. I have seen his Hospital discharge sheet dated 5.1.2019 on his health status.

2. I have also considered a social inquiry report filed by the Siaya County Probation Officer on 30.10.2019. The report reveals that the family of the victim was visited and only her mother could be traced. The child is not found but has sat her KCPE examination. She is scared at the mention of the name of the Appellant because of the trauma that she has undergone. She is psychologically affected by the defilement.

3. The Probation report is against reduction of the sentence imposed as the act affected the child's academics and health. she complains of stomach ache all the time and cries whenever the Appellant's name is mentioned.

4. The Appellant is a 38 year old man. He is HIV positive and on ARVs. He is married with 3 children. He knew and ought to have known that a child aged 13 years cannot be a sex object for him to satiate his thirst.

5. The offence is prevalent and traumatizing to the victim of the offence. The Appellant would not wish such an act to be done to his own children. Children expect adults to protect them. Children are vulnerable and so the law was enacted to protect them from pedophiles and sex pests. The Appellant knew that if he had sexual encounter with a child, he would most likely infect her with HIV/AIDs because of his own status. He did not care. He now asks for leniency from the Court. The Court has heard his cry but he is not remorseful meaning he maintains that he is innocent. He does not think that his conviction was sound. That being the case, I find no reason to interfere with the sentence imposed by the trial Court which was mandatory minimum but which is lawful and appropriate in the circumstances as the Appellant has had an opportunity to mitigate.

6. Accordingly, I uphold the 20 years imprisonment imposed on the Appellant. I dismiss the appeal against sentence. The appellant may benefit from remission which is in the discretion of the prison authorities, subject to his exhibiting good character, discipline and industry while in prison.

7. Orders accordingly.

**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 Snr Principal Prosecution Counsel for the State

CA: Brenda and Modestar