



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL CASE NO. 42 OF 2018**

**MO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From Original Conviction and Sentence in Ukwala PMCRC (S.O.) 26 of 2017 dated 31.8.2018 before Hon. C.I. Agutu – R.M.)***

**RESENTENCE RULING**

1. On 9.10.2019 this Court delivered a judgment dismissing the Appellant's appeal against Conviction and gave him an opportunity to mitigate afresh for reconsideration of sentence imposed on him.
2. In his mitigation, he stated that he has many Children at home. That his first wife died in August 2001 and left him with 5 Children. That his second wife died in 2010 and left him with 2 children and he has another wife with 6 children who all depended on him as a casual labourer. He urged the Court to consider his mitigation and the fact that he is HIV positive and on drugs hence he needs proper care and good food which is not found in prison.
3. This court also ordered for a Social Inquiry Report and a Victim Impact Statement. The social Inquiry Report filed today 11.11.2019 portrays the Appellant as a person loved by his immediate family members but the Victim's family are opposed to any form of leniency extended to him. The child victim who is the appellant's cousin's daughter, was traumatized and had to be relocated far from home to recover and continue with Education. Her parents are bitter and the family threaten revenge against the Appellant who is widowed twice.
4. The Appellant at the time he committed the offence of defilement was HIV/AIDS positive and on drugs. He lost 2 of his wives and according to the Social Inquiry Report, he later inherited a Sister-in-Law within the clan.
5. The Victim was 14 years old. The Appellant knowing his health status was HIV positive went ahead to defile a child. He knew the consequences included infecting her with the HIV/AIDS virus thereby condemning her to death. He also ought to have known that such act would land him in the hands of the law which prescribes severe punishments for such an offence.
6. The family of the Child victim are also in Shock. The Appellant is not remorseful meaning he does not admit committing the offence yet the evidence tendered against him is overwhelming. I see no reason why I should interfere with 20 years' imprisonment, having accorded him an opportunity to mitigate. The appellant should be kept away from the Society until he fully reforms and is rehabilitated as the impact of the offence on the victim and her family is long term.
7. Accordingly, I decline to interfere with sentence of 20 years imprisonment as the offence is prevalent and therefore a 63 year old man ought to have known the consequences of his actions.
8. The Appeal against sentence is hereby dismissed. The Appellant to serve full sentence.

**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 SPPC for the State

CA: Brenda and Modestar