



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: MAJANJA J.

CRIMINAL APPEAL NO. 83 OF 2017

ANTHONY MOSONGOI YAMBOI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. D.K Matutu – SRM dated 24th July 2017 at the Principal Magistrate’s Court at Kilgoris in Criminal Case No. 28 of 2017)

JUDGMENT

1. The appellant, ANTONY MOSONGOI YAMBUI, was charged with the offence of defilement as follows:

On the 21st July 2017 in Transmara West District of the Narok County, unlawfully penetrated his penis into the vagina of a girl namely DN aged nine (9) years.

2. He also faced an alternative count of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act. The particulars were that:

On the 21st July 2017 in Transmara West District of the Narok County, unlawfully and intentionally touched the vagina of DN a girl aged nine (9) years with his penis.

3. When the matter came up for plea on 24th July 2017, both charges were read to the appellant in Maasai and he pleaded guilty to the alternative count. The facts were also read to him and he pleaded guilty. He was convicted on the alternative count and sentenced to twenty (20) years imprisonment. He now appeals against conviction and sentence.

4. The thrust of his appeal is that he was induced to plead guilty and was not advised of the consequences of his plea. He also contends that the sentence of twenty (20) years was manifestly excessive.

5. I have considered the proceedings and I am satisfied that the trial magistrate followed the procedure for taking the plea set out in section 207 of the Criminal Procedure Code and highlighted in **Adan v. Republic, [1973]EA 445**. He was informed of the charges in Maasai and he even admitted to the lesser charge.

6. The facts read out disclose the offence of defilement and they showed that he did an act of penetration. He however elected to plead to the lesser and alternative charge. The P3 form confirms the fact. He accepted the fact and in mitigation he did not indicate anything that would have changed his plea. I therefore find that the plea was unequivocal and the conviction is affirmed.

7. As regards the sentence the mandatory minimum sentence under section 11(1) of the Act is ten (10) years imprisonment. I see no reason to depart from it. I therefore reduce the sentence to ten (10) years imprisonment.

8. Subject to the reduction in the sentence the appeal is dismissed.

Dated and delivered at Kisii this 11th day of October, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Appellant in person.