



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CRIMINAL APPEAL NO. 17 OF 2018**

**KENNEDY OMBATI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence of Hon. B. D.K Matutu– SRM*

*dated 31<sup>st</sup> May 2017 at the Principal Magistrate’s Court*

*at Kilgoris in Criminal Case No. 24 of 2017)*

**JUDGMENT**

1. The appellant KENNEDY OMBATI was convicted on his own plea of guilty for the offence of defilement contrary to **section 8(1) and (3)** of the Sexual Offences Act No. 3 of 2006. The particulars of the offence were that on 15<sup>th</sup> May 2017 at Kilgoris Township in Transmara West Sub-County within Narok County, he intentionally caused his penis to penetrate the vagina of S N, a girl aged 13 years. He was sentenced to serve 20 years imprisonment.

2. The appellant’s appeal is on the sentence only. The appellant states that that he is a young man of twenty years old and he is asking the court to reduce the sentence. He is remorseful and comes from a poor family and he is the sole breadwinner and he has changed since his imprisonment. He also states that he was novice and did not understand the nature of the charges.

3. The trial court read the charge to the accused in Kiswahili the language he stated he understands and his response was that “*it is true*”. The facts were read to him and he replied “*the facts are true*”. In my view he understood the charge and pleaded guilty to it. The complainant was 13 years.

4. Despite his plea for a reduction of the sentence, I find that my discretion is constrained because the sentence of 20 years imprisonment is the mandatory minimum sentence under section 8(3) of the Sexual Offences Act. It was lawfully imposed by the trial magistrate and there is no legal authority for this court to set it aside. The appeal is dismissed. The conviction and sentence is upheld.

**Dated and delivered at Kisii this 16<sup>th</sup> day of November 2018.**

**R.E OUGO**

**JUDGE**

Mr. Otieno for the State.

Appellant in person.

Rael Court Clerk