

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO. 2 OF 2016

PAUL NYARIACHA NYAUNDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon.L. Kaityany– SRM

dated 30th June 2015 at the Chief Magistrate’s Court at Kisii

in Criminal Case No. 1303 of 2015)

JUDGMENT

1. The appellant PAUL NYARIACHA NYAUNDI was charged with the offence of defilement contrary to **section 8(1)** as read with **Section 8(2)** of the Sexual Offences Act No. 3 of 2006. The particulars of the offence were that on 9th May 2015 at [particulars withheld] Village in Kisii Central District within Kisii County, he intentionally and unlawfully caused his penis to penetrate the vagina of E M, a child aged 8 years old. He was charged with an alternative charge of “Indecent act with a child contrary to **section 11(1)** of the Sexual Offences Act No. 3 of 2006. The particulars of the offence were that on 9th May 2015 at [particulars withheld] Village in Kisii Central District within Kisii County, rubbed his penis on the vagina of E M, a child aged 8 years old.

2. He was acquitted on the main charge and convicted to 15 years imprisonment on the alternative charge. The appellant’s appeal in on sentence only. He has sought forgiveness and has requested to have his sentence reduced to the minimum. The prosecution indicated he is first offender. The trial court in sentencing the appellant considered his mitigation and the age of the complainant.

3. Section 11 (1) of the Sexual Offences Act provides for a minimum sentence of 10 years. Being a first offender I will exercise my discretion and reduce the sentence from 15 to 10 years imprisonment.. Sentence to ran from 30th June 2015.

Dated signed and delivered at **Kisii** this **16th** day of **November 2018**.

R.E.OUGO

JUDGE

In the presence of;

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| Appellant | In person |
| Mr. Otieno | For the State |
| Rael | Court Clerk |