

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 154 OF 2015

ANTHONY SHIKANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from Original Conviction and Sentence in **Molo Chief Magistrate's**

Criminal Case No. 154 of 2015 by **Hon. A Towett , Ag. S.R.M.** on **09/06/15**).

J U D G M E N T

1. Anthony Shikanga, the Appellant was charged with the offence of defilement contrary to **Section 8(1) (2)** of the **Sexual Offences Act**. The Complainant was a **child** aged **five (5) years**. After being taken through full trial he was found guilty, convicted and sentenced to life imprisonment.

2. Aggrieved, he appealed against conviction and sentence.

3. However, when the matter came up for hearing of the appeal, he abandoned the appeal against the conviction but mitigated on sentence. In opposing the appeal, learned counsel for the state, **Mr. Omutelema** pointed out that what was meted out was the minimum prescribed sentence for the offence.

4. The victim of the crime was aged five (5) years old.

5. In the case of **Ogolla S/o Owuor (1954) EACA 270** it was stated that:

“The court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”

6. Section 8 (2) of the Sexual Offence Act provides thus:

“A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.”

7. The sentence imposed was the mandatory prescribed sentence for the offence therefore lawful. The Court had no discretion of imposing any other sentence. In the premises the appeal is devoid of merit. Accordingly, it is dismissed.

Dated, Signed and Delivered at Nakuru this **13th** day of **December, 2018**.

JUDGE