



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAROK**

**CRIMINAL APPEAL NO 133 OF 2017**

**DOMINIC RUTO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONENT**

***[Being an appeal from the conviction and sentence dated 5<sup>th</sup> October 2017] in the chief magistrate's court in criminal case No 875 of 2013, Republic v Dominic Ruto]***

**JUDGEMENT**

1. The appellant has appealed against his sentence of 15 years imprisonment in respect of the offence of defilement contrary to section 8 [1] [4] of the Sexual Offences Act No 3 of 2006.
2. The state has supported the sentence.
3. In his petition of appeal to this court, the appellant has raised six [6] grounds in support of his mitigation. In a coalesced form the appellant has faulted the trial court for imposing a manifestly harsh sentence in view of the fact that he was a first offender. He has urged the court to impose a non-custodial sentence in view of the fact that he was the sole bread winner of both his young family and his old widowed mother. Additionally, he has also stated that he is remorseful and repentant. Finally, he has stated that he is reformed and has received Christ as his saviour.
4. The state through Ms Torosi supported the sentence pointing out that the complainant was aged 16 years old and that the DNA profiling clearly indicated that the appellant was the biological father of the child, born as result of the defilement. She also submitted that as result of this defilement, the complainant became a mother and this disrupted her education. Finally, she cited *Francis Karioko Muruatetu and Another v Republic [2017] ECLR* and urged the court to dismiss the appeal.

**ISSUES FOR DETERMINATION**

5. In the light of the appellant's mitigation and the aggravating circumstances as set out by the respondent, I find the following to be the issues for determination.

**ISSUE 1**

1. Whether or not the sentence is manifestly excessive?
2. What are the appropriate orders to be made?

**Issue 1**

I have considered both the mitigating and aggravating factors. As a result, I find that the aggravating factors outweigh the mitigating factors. As a result, I find that the sentence imposed is proper.

**ISSUE 2**

6. The upshot of the foregoing is that the trial court exercised its discretion properly with the result there is no basis to interfere with the sentence imposed.
7. Consequently, I hereby confirm the sentence and the same is hereby dismissed.

Judgement delivered in open court on this 13<sup>th</sup> day of December, 2018 in the presence of the appellant and in the absence of the respondent.

**J. M. BWONWONGA**

**JUDGE**

**13/12/2018**