

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL APPEAL NO. 60 OF 2017

JULIUS CHERUIYOT BII.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Being an Appeal from Original Conviction and Sentence in **Molo Chief Magistrate's Criminal Case No. 2092 of 2014** by **Hon. S. Wahome, C.M.** on 20/06/17).*

J U D G M E N T

1. **Julius Cheruiyot Bii**, the Appellant, was charged with the offence of defilement contrary to **Section 8 (1) (3)** of the **Sexual Offences Act, No. 3 of 2006**. The Complainant was a child aged **13 years**.
2. After being taken through full trial he was convicted and sentenced to twenty (20) years imprisonment.
3. Aggrieved, he appealed against the conviction and sentence but at the hearing of the appeal, he abandoned the appeal on conviction and mitigated on sentence. He urged the court to reduce it to the term served and take into consideration the period he was in custody.
4. The state through learned counsel, **Mr. Omutelema** opposed the appeal. He urged that the sentence meted out was the minimum sentence provided for the offence.
5. In the case of **Ogolla S/o Owuor (1954) E.A. 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. To this we would add a third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case”

6. Section 8 (3) of the Sexual Offences Act provides thus:

“A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty year.”

7. The sentence that was imposed is the mandatory minimum sentence provided for the offence, therefore, the learned magistrate had no discretion of passing a lower sentence than what was meted out.
8. In the result, the appeal is devoid of merit and is dismissed.

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

L.N. MUTENDE

JUDGE