

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

Criminal Appeal No. 105 Of 2014

(Formerly Kisii Hccra No. 65 Of 2012)

Between

F A O..... Appellant

And

RepublicRESPONDENT

(Being an appeal from the original conviction and sentence of Hon. G. M. Ong'ondo, SPM in Senior Principal Magistrates Court at Oyugis in Criminal Case No. 3 of 2012 dated 8th March 2012)

JUDGMENT

1. The appellant, **F A O**, was charged and convicted on her own plea of guilty of the offence of defilement contrary to **sections 8(1) and (3)** of the ***Sexual Offences Act, 2006***. The particulars of the charge were that on 27th February 2012 at [particulars withheld] Location in Rachuonyo South District within Homa Bay County, she caused her vagina to be penetrated by the penis of DO aged 12 years. She was sentenced to 20 years imprisonment.
2. According to the petition of appeal filed on 12th March 2012 she appeals against her sentence. She contends that she was a first offender and was remorseful and was thus entitled to the benefit of a non-custodial sentence; that she was convicted without the any witnesses being called; that the child was friend of her brother-in-law's son and had spent the night severally in her home; that her plight as a mother and sole bread winner of two young children was not considered and that the 20 year sentence imposed on her was unduly hard and excessive.
3. Mr Oluoch, learned counsel for the respondent, submitted that there was no error in the sentence passed as the sentence imposed was the mandatory sentence provided for by the law.
4. **Section 8(3)** of the ***Sexual Offence Act, 2006*** provides for a mandatory sentence of 20 years in the event of a conviction for the defilement of a child aged between age 12 and 15 years. As the prescribed sentence is mandatory, I cannot intervene in the sentence which is legal.
5. The sentence is affirmed. The appeal is dismissed.

DATED and DELIVERED at HOMA BAY this 9th day of July 2015.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.