**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.141 OF 2013**

***(An Appeal arising out of the conviction and sentence of Hon. T. OKELO - SPM delivered on 12th July 2013 in Makadara CM. CR. Case No.305 of 2012)***

**JAMES NGUGI NDICHU…….……APPELLANT**

***VERSUS***

**REPUBLIC…….....RESPONDENT**

**JUDGMENT**

The Appellant, James Ngugi Ndichu, was charged with the offence of **defilement** contrary to **Section 8(1), (3) of the Sexual Offences Act**. The particulars of the offence were that on diverse dates between 29th November 2011 and 11th December 2011 at ***[particulars withheld]*** Village, Nairobi Area, the Appellant committed an act which caused penetration into a female genital organ (vagina) of J W, a child aged 15 years. In the alternative, he was charged with the offence of **committing an indecent act with a child** contrary to **Section 11(1)** of the **Sexual Offences Act**. The particulars of the offence were that on diverse dates between 29th November, 2011 and 11th December, 2011 at ***[particulars withheld]*** village, Nairobi Area, the Appellant intentionally and unlawfully committed an indecent act with J W, a child aged 15 years by touching her private parts, namely vagina. When arraigned in court, he pleaded not guilty to the charges. After full trial, the trial court convicted the Appellant of the main count. He was sentenced to serve twenty (20) years imprisonment. Aggrieved by the sentence, he appealed to this court.

The Appellant raised several grounds in his petition of appeal challenging the sentence. During the hearing, the Appellant told the court that he was not appealing against his conviction. He was only challenging the sentence. He claimed that the sentence that was imposed on him was excessive. He suffers from asthma and peptic ulcers. He urged court to favourably consider his plea for reduction of sentence. Ms. Kimiri for the State opposed the appeal. She submitted that the sentence was the minimum sentence provided by the law. The Appellant had not established any mitigating circumstances to warrant the reduction of the sentence. She urged court to dismiss the appeal.

The Appellant is not challenging the conviction. He is appealing against the sentence. The trial court that sentenced the Appellant to a custodial sentence was exercising judicial discretion. This court will only interfere with the sentence if it is established that the sentence was excessive or harsh. **Section 8(3)** of the **Sexual Offences Act** provides that where an accused person is convicted of defiling a victim whose age is between 12 and 15 years, such accused person shall be sentenced to serve a custodial sentence of not less than twenty (20) years imprisonment. The complainant was fifteen (15) years old at the time the offence was committed. The sentence the Appellant is serving is lawful. Twenty (20) years imprisonment is the minimum sentence provided under **Section 8(3**) of the **Act**.

The court has taken into consideration the facts of the case and the mitigation of the Appellant. The Appellant's appeal lacks merit and is hereby dismissed. The sentence of the trial court is lawful. It is upheld. It is so ordered.

**DATED AT NAIROBI THIS 3RD DAY OF JULY 2015.**

**L. KIMARU**

**JUDGE**