



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 236 OF 2011

A J W..... APPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

On 29th May, 2015 this Court ordered for an age assessment of the Appellant after he made an allegation to the effect that at the time of the incident he was aged seventeen (17) years.

An age assessment report dated 21st July, 2015 shows that the age of the appellant as twenty one (21) years.

The Court had also ordered for a probation officers report. I have perused the two reports and I am satisfied that if the offender is aged twenty one (21) years old today. He was by deduction born in the year 1994. The incident of defilement is said to have taken place in the year 2011.

At the time of the incident therefore the appellant was aged seventeen (17) years old.

This case therefore falls under section 8(7) of the Sexual Offences Act which provides,

“Where the person charged with an offence under this act is below the age of eighteen (18) years, the Court may upon Conviction, Sentence the Accused person in accordance with the provisions of the Borstal Institutions Act and the children's Act”.

In sentencing the Accused/Appellant to twenty years imprisonment, the learned trial magistrate was in error for failure to apply the provisions of section 8(7) of the Sexual Offences Act.

It is noted that the Accused was Convicted and Sentenced in the year 2011. He has now served close to four (4) years imprisonment.

He has undergone substantial punishment. He is now placed on probation for a period of eighteen (18) months commencing on the date of this ruling.

Ruling delivered, dated and signed this **5th** day of **October, 2015**.

.....

M. MUYA

JUDGE

5TH OCTOBER, 2015

In open Court and in the presence of:-

Learned Counsel for the prosecution Mr. Masila

Learned Counsel for the appellant absent

Court Assistant Musundi

M. MUYA- JUDGE