



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 31 OF 2013**

**JULIUS LINUS.....APPELLANT**

**VERSUS**

**STATE .....RESPONDENT**

**JUDGMENT**

Julius Linus was charged with the offence of defilement contrary to **Section 8(1) (2)** of the **Sexual Offences Act No. 3 of 2006**. The offence was allegedly committed on 24/3/2012 at Mutonyi area of Narok where he allegedly defiled SS a child aged 11yrs. In the alternative, he faced a charge of indecent act contrary to **Section 11(1) (a)** of the **Sexual Offences Act**. He denied the offence, the case proceeded to full hearing after which he was convicted and sentenced to serve 20 years imprisonment. Being dissatisfied with the sentence, he filed this appeal in which he prays that the court be lenient to him; that the sentences be allowed to run concurrently; that he is a first offender, is remorseful and regrets his actions, that he has learnt his lessons for the period he has been in prison and he has been sick from T.B; that he is young and the court should show mercy to save his life from destruction.

Mr. Chebii, Learned Counsel for the State opposed the appeal for reasons that the sentence meted is too lenient; that if the appellant is unwell, he will be treated while in prison, that he was not remorseful at the time of sentence; that the offence committed was very serious and he urged the court to enhance the sentence.

During the trial, the prosecution produced in evidence PEx.2 a P3 form filled by Dr. Hillary Kiptoo on 25/3/2012 in which he estimated the appellant's age to be 17 years meaning he was a minor when the offence was committed. It behoved the trial court to send the appellant for a proper age assessment to determine whether or not he was a minor. I find that the court erred in not taking into account that important fact because it would determine what sentence to mete on the appellant if found guilty.

This court on noting that fact on 13/6/2014, it sent the appellant for age assessment and after carrying out an age assessment, Dr. Bii was of the view that the appellant is above 19 years old. It means that in 2012, 2 years ago, the appellant was a minor and should have been dealt with under **Section 191** of the **Children's Act**. For the above reason, I hereby set aside the trial court's sentence and call for a probation officer's report for recommendations on where the appellant can serve sentence

**DATED and DELIVERED this 15<sup>th</sup> day of July, 2014.**

**R. P. V. WENDO**

**JUDGE**

**PRESENT:**

Appellant in person present

Mr. Chirchir for the State

Kennedy – Court Assistant