



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 61 of 2008

STEPHEN NTARACHIA M'ITURU.....APPELLANT

V E R S U S

REPUBLICRESPONDENT

J U D G M E N T

The Appellant Stephen Tarachia was convicted of one count of Defilement of a girl aged 17 years contrary to section 8(1) and (4) of the Sexual Offences Act. He was convicted of the offence and sentenced to 15 years imprisonment. He appealed against sentence. When the appeal came up for hearing the Appellant relied on what he filed in court titled “MITIGATION”. In that filed statement the Appellant stated.

1. **Your lordship, that the learned trial magistrate did not take into consideration the mitigation facts of the Appellant but imposed a custodial sentence of 15 years.**
2. **Your lordship, that the learned trial magistrate did not consider the mitigation facts of the Appellant that he is the sole bread winner of his family and the four children left by his brother and two children left by his sisters both of them passed away on road accident four years ago. All of them fatherless and motherless as the wife of my brother ran away leaving the children with the Appellant.**
3. **Your lordship, that the learned trial magistrate did not take into account the fact all the children are all in school and the custodial sentence imposed upon the Appellant will ruin their education.**
4. **Your lordship, that the learned trial magistrate did not take into consideration the burden of family members of the Appellant whose fundamental rights lies under Appellants shoulders but imposed a custodial sentence.**
5. **Your lordship, the fundamental rights the Appellants children and those of his death brother and sister will suffer irreplaceable dangers because of the custodial sentence passed upon the Appellant.**
6. **Your lordship, that the learned trial magistrate did not take into consideration the old age of the Appellant who is remorseful and having stomach ulcers and high blood pressure and who is begging your lordships court to exercise leniency so that the Appellant can seek medical attention**

from qualified doctors as the prison dispensary could not provide the same.

The state was represented by Mr. Moses Mungai who opposed the appeal. The learned state counsel submitted that since the Appellant had been sentenced to 15 years, which was the minimum sentence for the offence his appeal against sentence should fail.

I have carefully considered the Appellants appeal.

The Appellant was convicted of defilement contrary to section 8(1) as read with 8(4) of the Sexual Offences Act. That section stipulates:

(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.”

The complainant was 17 years old. The sentence provided for this offence is imprisonment for a term not less than 15 years imprisonment.

I have carefully considered the appeal. I have considered that the complainant was a mentally challenged girl aged 17 years old. She was only rescued by good Samaritans who caught the Appellant in the very act in a bush where he had taken the Appellant. I find that the offence was aggravated and that the Appellant should have been sentenced to a longer term of imprisonment.

For the Appellant, he was sentenced to the minimum sentence of 15 years imprisonment. Being a minimum sentence provided under the law, it cannot be reduced.

In the result the Appellant’s appeal lacks in merit and is dismissed accordingly.

SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF MAY 2013.

**J. LESIIT
JUDGE**