



**Stephen v Republic (Criminal Appeal 291 of 2019)
[2022] KECA 1250 (KLR) (10 November 2022) (Judgment)**

Neutral citation: [2022] KECA 1250 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 291 OF 2019
PO KIAGE, F TUIYOTT & JM NGUGI, JJA
NOVEMBER 10, 2022**

BETWEEN

SHEM NYANGI STEPHEN APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal from the Judgment of the High Court of Kenya at Kisii, (Majanja, J) dated 24th July, 2018 in HCCRA No 32 of 2017)

JUDGMENT

1. The appellant, who is in person, has indicated that he does not challenge conviction and therefore withdraws the appeal against conviction leaving this as an appeal against sentence only.
2. He was sentenced to 20 years imprisonment by the trial court which rendered its judgment, after listening to his mitigation, on November 18, 2016. The conviction and sentence were affirmed by the High Court in a judgment rendered on July 24, 2018.
3. Miss Odumba, learned counsel for the respondent does not oppose the withdrawal of the appeal against conviction, and on sentence, urges that given the circumstances of this case and in particular, the age of the complainant at the time, which, though appearing to be conflicting between 13 and 16, should really tilt in favour of the appellant as the age of 16, and considering further that there were no aggravating circumstances, then the sentence ought to be reviewed. She indeed adds that the period already served ought to be sufficient punishment for the appellant.
4. We agree, and in the result, order that the appeal on sentence be and is hereby allowed. We set aside the 20 year term of imprisonment and reduce it to the time already served. In the result, the appellant shall be set at liberty forthwith unless otherwise lawfully held.
5. The full reasons for our decision shall be rendered on March 17, 2023.



DATED AND DELIVERED AT KISII THIS 10TH DAY OF NOVEMBER, 2022.

PO KIAGE

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JUDGE OF APPEAL

F TUIYOTT

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JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

