



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 75 OF 2008**

**JOSEPHAT KIBET NJOMO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***[Being an appeal from the original conviction and sentence in Criminal Case No. 3086 of 2008 Josephat Kibet Njomo v Republic in the Principal Magistrates Court at Kapsabet by G. M. Mutiso Resident Magistrate dated 15<sup>th</sup> September 2008].***

**JUDGMENT**

**1. JOSEPHAT KIBET NJOMO** (the appellant) was convicted on his own plea for the offence of defilement Contrary to **Section 8(1)** as read with **8(2)** of the Sexual Offences Act No.2006 and sentenced to serve life imprisonment.

**2.** The particulars of the offence stated that on 10<sup>th</sup> day of September 2008 in **NANDI SOUTH**, of the **RIFT VALLEY** province, he penetrated the genital organs of **RM**, a child aged 3 ½ years.

**3.** The facts which the appellant admitted as correct, stated that on 10.09.2008 at [**particulars withheld**] village at 3.00pm, the minor, a boy aged 3 ½ years, was left at their home by his parents. Later when the father returned home, the child was nowhere to be found. A search eventually led to location of the child inside appellant's home – lying on a bed, while the appellant stood outside.

The child was not wearing his shorts and the father noticed that blood and faecal matter was oozing through the anus. The child had been given a banana, which he was unable to eat, and was crying.

**4.** The child later explained to the father that the appellant had sodomized him.

A medical examination revealed an injured anus which made it difficult for the child to even sit down.

The child's blood stained pair of short trouser was recovered from the appellant's house. A duly filled P3 form was produced as Exhibit.

In mitigation, the appellant sought forgiveness.

**5.** He now contests the trial court's finding on conviction and sentence saying the facts did not support the charge, and the trial magistrate did not give him time to recollect himself before sentence.

**6.** He canvassed the appeal through written submissions where he argued that the record did not disclose which language the court used and that he should have been allowed to use **NANDI** which is his mother – tongue.

**7.** Secondly, that the charge sheet was not comprehensive, and the charge as well as the facts were ambiguous and not easy to understand.

**8.** In opposing the appeal, **MISS MUMO** on behalf of the State submitted that the charge was read over and explained to the appellant in Kiswahili and he responded by saying they were true.

The trial magistrate re-confirmed the plea of guilty and he was given a chance to mitigate after which sentence was passed. She described the sentence as legal as the minor was 3 years old which age was proved in the P3 form produced.

**9.** On language – the appellant is being pretentious, his own conduct even in this court gives him away – he confirmed to this court that he understood Kiswahili and infact elected to use Kiswahili – as the medium of communication when addressing the court. This lament about being disadvantaged by use of a language not understood by him is a non- starter which has no leg on which to stand.

The plea was unequivocal – the charge was read out, the appellant admitted. The facts as narrated disclosed the offence, and he confirmed the facts to be true. He was given a chance to mitigate, and all he sought was forgiveness.

I cannot fault the trial magistrate on conviction.

The sentence was as provided by law and I decline to interfere with it especially in light of the fact that the boy child who was robbed of his innocence was on 3 years old.

He does not deserve mercy whatsoever and I confirm the sentence.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 12<sup>TH</sup> DAY OF APRIL 2019**

**H. A. OMONDI**

**JUDGE**