



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 305 OF 2013**

**DANIEL MADI .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal from the original conviction and sentence in Kajiado Principal Magistrate's Court Criminal Case No. 473 of 2013 E.A. Mbicha ,RM on 8/11/2013)**

**JUDGMENT**

1. **Daniel Madi**, the Appellant was charged with the offence of **defilement** contrary to **Section 8(1)** as read with **Section 8(3)** of the **Sexual Offences Act No. 3 of 2006**. Particulars of the offence were that on the 30<sup>th</sup> April, 2013 within **Isinya** District in **Kajiado** County, he unlawfully and intentionally committed an act by inserting a male organ (*penis*) into a female genital organ (*vagina*) of a girl, namely **SN** aged 15 years.
2. In the alternative he was charged with committing an **indecent act** contrary to **Section 11(1)** of the **Sexual Offences Act No. 3 of 2006**. Particulars of the offence being that on diverse dates between 15<sup>th</sup> December, 2012 and 30<sup>th</sup> April, 2013 at **Isinya** District within **Kajiado** County unlawfully and intentionally committed an act of indecency by touching the vagina of **SN**.
3. Facts of the case were that the appellant worked at a poultry house near the complainant's grandmother's home. He frequently visited the home whereafter a relationship developed between him and **PW1, SN**, the complainant. They engaged in sexual intercourse. She became pregnant. The matter was reported to the police. The accused was arrested and charged.
4. In his defence the appellant stated that their parents were aware of their relationship. He admitted having had sex with the complainant.
5. The trial Court analyzed the evidence adduced and convicted the appellant. He was sentenced to **20 years** imprisonment.
6. Being aggrieved with the conviction and sentence he appealed on the ground that he had no idea that the complainant was a minor. However, when it came to hearing of the appeal the appellant admitting having impregnated the complainant only mitigated on sentence.
7. In response thereto the State Counsel, **Ms Kefa** opposed the appeal. She submitted orally that the age of the complainant was proved as 15 years. She was a primary school girl and the appellant had knowledge of that fact.
8. As the first appellate court, I am duty bound to reconsider the evidence, re-evaluate it to come up with my own conclusions bearing in mind that I neither saw nor heard witnesses testify. (*see Okeno versus Republic [1972] E.A. 32*).
9. The appellant was sentenced to the minimum prescribed sentence for the offence the appellant was charged with. It is the practice that an appellate court will not normally interfere with the discretion of the sentencing court unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial court was manifestly so excessive as to amount to an injustice (*see Republic versus Mohamedali Jamal [1948] is EACA 126*). Therefore I have no basis for interfering with the sentence meted out.
10. In the result the appeal is dismissed.
11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 15<sup>TH</sup> day of JANUARY, 2015.**

**L.N. MUTENDE**

**JUDGE**