



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
CRIMINAL APPEAL CASE 15 NO OF 2015

JAMES NYANGAU NYABWECHHE.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

This is an appeal by **James Nyang'au Nyabwecha** the appellant. He is appearing in person. He was charged in Senior Resident Magistrate Court at Keroka, **Criminal Case No.408/2014**.

He was charged of defilement contrary to **Section 8(1)** as read with **8(2)** of the **Sexual Offences act No.3 of 2006**. The particulars thereof were that on the 22nd day of April 2014 at Riamoni in Masaba North District within Nyamira County, intentionally caused his penis to penetrate the vagina of **L B N**, a child aged 9 years.

From the records of the proceedings, the accused person on taking plea, pleaded guilty to the charge.

Accordingly the court proceeded to read out the sentence to him. He was sentenced to life imprisonment as provided for under **S.8 (2)** of the **Sexual Offences Act**.

He was also given (14) days right of appeal.

Later on, the accused felt aggrieved and dissatisfied and filed an appeal.

His petition is as follows:

1. **THAT:** *I pleaded guilty to the charges.*
2. **THAT:** *I was never given time to be sober to respond to the charges.*
3. **THAT:** *The prosecution had pressured me to admit so not obtain Court*

mercies.

4. **THAT:** *I was beaten by my arrestors and was in great pain that imparted my*

reasoning in court

5. **THAT:** *I was forced to plead guilty by the prosecution side.*
6. **THAT:** *The learned trial magistrate erred in law and facts by not warning me*

Of the offence.

7. **THAT:** *The information given above is true to the best of my knowledge.*

He prays for a lighter sentence of a trial in the alternative.

THE APPELLANT SUBMISSION:

The appellant applied wholly on his petition above, had nothing else to add.

THE RESPONDENT SUBMISSIONS:

1. *The procedure in the lower Court was duly followed, the language of choice was Ekegusii and the charges being then read to him, he pleaded guilty.*
2. *From the records, the proceedings, the lower Court cautioned the appellant four (4) times of entering the plea of guilty he still maintained the same.*
3. *On 23rd April 2014 the Court cautioned the appellant. He still wished to maintain the same plea of guilty.*
4. *It can therefore be reasonably be deduced that if the appellant had been coerced, he had a chance to recant. He was not from the court records.*

The role of the first appellate court is to consider the entire evidence, evaluate it and reach an independent conclusion bearing in mind that it neither heard nor saw the witnesses (*See Okeno –versus- Republic 1972 E.A. 32.*)

FINDINGS AND CONCLUSION

The appellant having been cautioned four (4) times on viability of otherwise of pleading guilty to this offence hastily, he still remained firm on the plea he was making.

There being no evidence of this coercion, this court will but dismiss the appellants appeal.

Accordingly, the appeal filed on the 7th May 2014 be and hereby dismissed and the sentence meted out to him is hereby upheld.

It is so ordered

Dated and delivered at Nyamira on 9th day of December 2015.

C.B. NAGILLAH

JUDGE

In the presence of:

In person - Appellant

Malesi for the State

Mercy -Court Clerk

