



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 40 OF 2013**

**VINCENT OCHIENG ARINGO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*[From original conviction and sentence in the Principal Magistrate's Court at Bondo Criminal Case No. 284 of 2013 Before Hon. M.M. Nafula]*

**J U D G M E N T**

The appellant is charged with the offence of defilement contrary to section 8 (1) (3) of the Sexual Offences Act No. 3 of 2006.

the particulars are that on the 20th day of March 2013 at about 4 p.m at [particulars withheld] location in Bondo district within Siaya county, unlawfully and intentionally caused his penis to penetrate into the genital organ (vagina) of **J A O** a girl aged 3½ years.

The appellant was equally charged with an alternative count of indecent act with a girl contrary to section 11 (1) of the Sexual Offences Act No. 3 of 2006.

The particulars are that on the 20th day of March 2013 at about 4.00 p.m at [particulars withheld] location in Bondo district within Siaya county committed an indecent act with a girl child aged 3½ years by touching her breast and vagina.

On his own plea of guilt the appellant was convicted and sentenced to 20 years imprisonment. The appellant had filed eight grounds of appeal vide the petition dated 5-4-2013. The same are essentially mitigational.

The brief facts as presented by the prosecution are that the complainant had been sent by her mother to a water point. The accused lured her into a bush and defiled her. When the child went home her mother saw some fluids on her private parts. She found on examination that she had been defiled.

The P3 form produced as an exhibit showed that there was spermatozoa on her vagina.

The charges were admitted by the appellant even after the facts were read to him. She still admitted them. Looking at his petition the appellant does not suggest in any way that he did not commit the offence. Infact he argues that the complainant has all along been his girlfriend.

The appellant has submitted that the age of the complainant was not ascertained. However, the P3 form clearly shows the age to be 3½ years. By admitting to the charge as well as the facts it is impossible to believe the appellant's submission.

Further, by virtue of the fact that he pleaded positively to the charge under the provision of section 348 of the Criminal Procedure Code, he is estopped from stating otherwise.

For the reason alluded above I do not see any merit in this appeal and the same is dismissed.

**Dated, signed and delivered at Kisumu this 20th day of January, 2014.**

**H.K.  
JUDGE**

**CHEMITEI**

*HKC/va*