



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 236 OF 2012

MUMBA ALI MUMBA APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 70 of 2012 of the Principal Magistrate's Court at Kaloleni – Hon. Wewa- PM)

JUDGMENT

The Appellant **MUMBA ALI MUMBA** was charged Convicted and Sentenced to twenty (20) years imprisonment for the offence of defilement of a child contrary to section 8(1) as read with Section 8(3) of the Sexual offences Act No. 3 of 2006.

The particulars are that :-

“On the month of September, 2011 at [Particulars withheld] Kaloleni – Kilifi County he committed an act which caused penetration of the male genital organ namely penis into a female genital organ namely vagina of T T a child aged fifteen (15) years”.

A perusal of the charge sheet shows that the period of the alleged defilement is not shown. It simply shows the month of September, 2011. The Complainants evidence does not help the befuddlement either. At page 4 line 3 she states,

“In September, 2011 I do recall was expectant”.

It is not shown when the act of penetration was done, or between which date and which other one.

During cross- examination by the Appellant at page 4 line 21 she states,

“The date was 15th January, 2011. It is now eight(8) months pregnancy its for Mumba”.

I find the recording of the evidence in this case rambling and incoherent. Its not easy to evaluate it and arrive at a definite conclusion. This is a fit case for retrial. I accordingly by reason of the above quash the Conviction and the Sentence of twenty (20) years imprisonment and order for retrial before another Court of competent jurisdiction.

The matter to be mentioned in Kaloleni Court within fourteen (14) days from the date of this Judgment.

Judgment delivered dated and signed in open Court this **31st** day of **March, 2014**.

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M. MUYA

JUDGE

31ST MARCH, 2014

In the presence of:-

Learned Counsel for the Sate Miss Mwaura

The Appellant present

Court clerk Musundi