



No. 289/2014

**REPUBLIC OF KENYA**

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

**Criminal Appeal No. 89 Of 2013**

**Obedi Kilonzi Kevevo .....Appellant**

**Versus**

**Republic .....Respondent**

*(Being an appeal from the original conviction and sentence in Makindu Principal Magistrate's Court Criminal Case No. 178 of 2013 by Hon. M.O. Kizito , PM on 18/2/13)*

**JUDGMENT**

1. 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 thereof being that on the **10<sup>th</sup>** day of **February, 2013** in **Kibwezi District** within **Makueni County**, intentionally and unlawfully caused his male organ namely penis to penetrate the vagina of **M M**, a child aged **13 years**.

2. In the alternative count the appellant was charged with Indecent Act contrary to **Section 11(1)** of the **Sexual Offences Act No. 3 of 2006**.

The particulars of the offence being that on the **10<sup>th</sup>** day of **February, 2013**, in **Kibwezi District** within **Makueni County**, intentionally and unlawfully touched the vagina of **M M**, a child aged **13 years**.

3. He pleaded guilty to the main charge. He was convicted and sentenced to serve **twenty (20) years** imprisonment.
4. Being aggrieved by the decision of the court in his Supplementary Grounds of Appeal he states that the sentence meted out was harsh and that the trial magistrate failed to appreciate that having admitted the charge he had commenced rehabilitation process.
5. Opposing the appeal, the learned **Assistant Director of Public Prosecution, Mr. Gikonyo** stated that the sentence meted out was within the law as statute provided for a sentence of a term not less than **twenty (20) years**.
6. Being a first Appellate Court my duty is to re- consider the sentence and ascertain if it was proportionate to the offence committed.
7. The appellant admitted having caused his penis to penetrate the vagina of a child aged **13 years**.
8. According to **Section 8(3)** of the **Sexual Offences Act, 2006** any person who commits such an offence is liable to imprisonment for a term of not less than **twenty (20) years**.
9. This is the minimum prescribed sentence for the offence committed. It was incumbent upon the

court to impose the sentence as prescribed. The trial court properly directed itself in the circumstances. Therefore the appeal on sentence has no merit.  
10.It is dismissed.

**DATED, SIGNED and DELIVERED at MACHAKOS this 27<sup>TH</sup> day of MAY, 2014**

**L.N. MUTENDE**

**JUDGE**