



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL APPEAL NO. 91 OF 2012**

**PETER NJOROGI KIMANI ..... APPELLANT**

**VERSUS**

**REPUBLIC**

*(Being an appeal from the conviction and sentence of Hon. R.A Oganyo (SRM) delivered on 23/07/2007 in Machakos Chief Magistrate's Court Criminal Case No. 894 of 2007)*

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*(Before Hon. B. Thurairaja J)*

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

1. The Appellant, **Peter Njoroge Kimani**, was charged with the offence of “defilement of a girl under the age of eleven years contrary to section 8 (2) of the **Sexual Offence Act No. 3 of 2006.**”

The particulars of the offence were that “on the 15<sup>th</sup> day of July 2007 in **Kajiado District** within the **Rift Valley Province**, had carnal knowledge of **MWT**, a girl of the age of seven years.”

2. When the Appellant was arraigned before the trial court, he pleaded not guilty. The Appellant was convicted and sentenced to life imprisonment.

3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court on the following grounds:-

- **That the plea was not unequivocal.**
- **That section 207 (1) of the Criminal Procedure Code on plea taking was not complied with.**
- **That the sentence was harsh and excessive.**

4. During the hearing of the appeal, the Appellant relied on his written submissions. The learned counsel for the State opposed the appeal and described the plea as unequivocal and the sentence within the law.

5. The legal principles to be applied in plea taking in all Criminal Cases were well enunciated in the case of **Adan vs Republic [1973] EA 445** where the Court held:-

- i. **The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.**
- ii. **The accused's own words should be recorded and if they are an admission, a plea of guilty**

**should be recorded.**

- iii. **The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.**
- iv. **If the Accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.**
- v. **If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused’s reply should be recorded.”**

6. A perusal of the lower court record shows that the charge was read out and each and every ingredient stated by the court to the Appellant who replied “**it is true**”. The language of the court is reflected as **English/Kiswahili** interpretation. The court clerk is reflected as **Caleb**.

7. The facts read out in the court were that the Appellant stopped the seven year old complainant on the way, promised to buy her sweets if she had sex with him. That the Appellant then pushed the complainant down. The Appellant then removed the complainant’s innerwear, unzipped his trousers and inserted his male organ into the complainant’s private parts. The Appellant admitted these facts as correct.

8. The Appellant was given a chance to mitigate. During mitigation, the Appellant asked to be pardoned and once again admitted the offence. The life sentence is within the law.

9. The trial magistrate fully complied with the procedures for plea taking. The appeal has no merits and is dismissed.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 30<sup>th</sup> day of October 2014.**

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**B. THURANIRA JADEN**

**JUDGE**