



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 155 OF 2012**

JOHN NDEMI EMMANUEL..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 545 of 2011 of the Senior Resident Magistrate's Court at Wundanyi – **Hon. Orenge - SRM**)

**JUDGMENT**

Appellant herein was Convicted and Sentenced to twenty (20) years imprisonment for the offence of defilement contrary to section 8(1) (2) of the Sexual offences Act No. 3 of 2006.

The particulars are that on the 12th day of December, 2011 at [Particulars withheld] Village [Particulars withheld] Taita Taveta County the Accused intentionally caused his penis to penetrate the Anus of A.N. a boy aged three years.

The Complainant in this case is a boy child aged three years at the time of the offence. The appellant is a neighbour.

On the material day which was 12th December, 2011 the Complainant was at home in the company of his sisters C.M. aged ten (10) years (PW 1) A. K. aged twelve (12) years (PW 2).

Their mother M. C. (PW 3) had had left home for work. At about 9:00 a.m. the child went to the nearby house of the Accused and returned at 11:00 am, they observed that he was bleeding and had faeces emanating from the anus. They asked the child what had happened and he said it was the Accused who had pierced his anus. They reported the matter to their mother (PW 3) who in turn called the Accused and asked him what had happened but denied only stating that he had only given him food.

The clinical officer who examined the Complainant found that he had a tear at the anal opening and there was a bloody discharge from it. She was of the opinion that a blunt object had been used and the friction was due to penetration. When called upon to defend himself he stated that he had been implicated because the child used to visit him and further that the mother of the child bore a grudge against him.

The trial magistrate in his Judgment had no reason to doubt the evidence of PW 1 and PW 2 who are minors and whose evidence required corroboration under section 124 of the Evidence Act.

The appellant himself admitted that the child used to visit him. He emerged from his house bleeding from the anus. The Complainant had said that he had been pierced by the appellant. The evidence adduced before the trial Court irresistibly points to the guilt of the appellant. He alleges that the Complainants mother bore a grudge against him over land. She denied this, the Village elder PW 5 also denied the existence of a grudge between the Complainants mother and the appellant.

As the village elder matters pertaining to land should first be placed before him.

I find the Conviction was safe. The Sentence is lawful. I find no reason to disturb both the Conviction and Sentence.

The appeal has no merit and is disallowed.

Judgment dated delivered and signed this **20th** day of **September, 2013**.

.....

**M. MUYA**

**JUDGE**

**20TH SEPTEMBER, 2013**

**In the presence of:-**

Learned State Counsel Miss Ogweno

The appellant present

Court clerk Musundi