



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 62 OF 2006

MUTHENYA LOLE ACCUSED

VERSUS

REPUBLIC

(Being an appeal from the sentence of Hon. R.K. Mibei (ESQ) R.M delivered on 15/12/2004 in Makindu Principal Magistrate Criminal Case No. 1874 of 2004)

(Before Hon. B. Thurairaja J)

RULING

1. The Appellant, **Muthengi Lole** was charged with the offence of defilement of a girl under the age of 14 years contrary to **section 145 (1)** of the **Penal Code**.

The particulars of the offence were that on 11th day of December 2004 at **Sultan Hamud Township, Kiou Location** in **Makueni District** of the **Eastern Province**, unlawfully had carnal knowledge of **MM** a girl under the age of 16 years old.

2. The Appellant pleaded guilty to the charge and was sentenced to twenty four (24) years imprisonment with hard labour.
3. The facts of the prosecution case as read out in the trial court was that on 11/12/2004 the complainant who was ten (10) years old was playing outside her parents' house with other children. The Appellant who was a neighbour called the complainant and gave her one shilling and instructed her to go inside his house. The Appellant dragged the complainant to the bed and threatened her not to scream. The Appellant then removed his trousers and innerwear then lubricated his penis with "**Vaseline**" jelly then proceeded to do the same to the complainant's vagina. The Appellant then defiled the complainant through the night and released her in the morning with a stern warning that he was going to kill her if she exposed him.
4. The worried parents who had looked for the complainant throughout the night questioned the complainant who narrated her ordeal to them. The matter was reported to the police. The complainant was issued with a P3 form and proceeded to hospital for examination and treatment. The P3 form was filled in and reflected that the complainant had a torn hymen and the presence of a "**whitish discharge**" seen in her genitalia.
5. The Appellant was aggrieved by the sentence of 24 years. He appealed to this court on the grounds that the sentence was illegal and excessive.
6. **Section 145 (1)** (now repealed) of the **Penal Code** provides as follows:-

“Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment with hard labour for life.”

The sentence meted out was therefore within the law.

7. However, the appeal is on sentence only. It is also noted that the Appellant pleaded guilty before the lower court. The accused did not however show any remorse. The Appellant in his mitigation stated that he had no wife and intended to marry the complainant. This was outrageous. The Appellant ought to have known that his actions would land him on the wrong side of the law. The ordeal the complainant went through cannot be overlooked. The appellant in his grounds of appeal has however stated that he has reformed through the prison’s rehabilitation programmes. This court is inclined to reduce the sentence by four years.
8. Consequently, the sentence of the lower court is substituted with the sentence of 20 years imprisonment with hard labour.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 5th day of September 2013.

B. THURANIRA JADEN

JUDGE