



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 222 OF 2011

M K APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence of Hon.B.M Kimemia Senior Resident Magistrate delivered on 18/11/2011 in Kitui Senior Principal Magistrate Sexual Offence Case No. 38 of 2011)

(Before Hon. B. Thurania Jaden J)

J U D G M E N T

1. The Appellant, **Mutisya Kameti**, was charged with the offence of defilement contrary to **section 8 (1) (3)** of the **Sexual Offences Act No. 3 of 2006**.

The particulars of the offence were that on the 4th day of November 2011 at about 0.900 a.m. at **[particulars withheld] village, Makusya Sub-Location, Lower Yatta District** within **Kitui County**, the Appellant unlawfully caused his penis to penetrate the vagina of **D M M**, a girl aged 12 years.

2. In the alternative, the Appellant was charged with the offence of indecent act with a child contrary to **section 11 (1)** of the **Sexual Offences Act No. 3 of 2006**.

The particulars of the offence were that on the 4th day of November 2011 at about 09.00 a.m. at **[particulars withheld] village, Makusya Sub-location, Lower Yatta District** within **Kitui County**, the Appellant did an indecent act with a child namely **D M M**, a girl aged 12 years by touching her private parts namely vagina.

3. When the Appellant was arraigned in court on 7/11/2011, the charge was read out to him in a language that he understood. He pleaded guilty.
4. The prosecution read out the facts of the case. The facts gave out the complainant's name as **D M M**, a girl aged 12 years. It was stated that the Appellant who is an uncle to the complainant tied her hands with a rope, removed her underpants and threatened to kill her if she screamed. The complainant then proceeded to defile the complainant. The facts were supported by documentary evidence. A duly completed P3 form and an age assessment report were produced.
5. The Appellant in response to the facts stated that the same were correct. The plea was therefore unequivocal.
6. The court considered the mitigation offered by the Appellant. The Appellant was sentenced to

- twenty (20) years imprisonment.
7. The appeal is on sentence only. In addition to the grounds of appeal set out in the petition of appeal, the Appellant filed a **“Memorandum of Mitigation”** in which he set out his mitigation and stated that the sentence meted out was harsh and excessive.
 8. I have considered the provisions of **section 8 (3)** of the **Sexual Offences Act** which stipulates as follows:-

“A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

9. The sentence is within the law. The appeal has no merits and is dismissed. Consequently, I uphold both the conviction and sentence.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 31st day of October 2013.

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B. THURANIRA JADEN

JUDGE