



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 43 OF 2010**

*LESIIT, J*

**MOSES MWONGERA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal From The P.M.S court Maua Criminal Case No. 3541 of 2009 from the judgment and sentence of J. N. Nyaga delivered on the 16<sup>th</sup> October 2009).*

**JUDGEMENT**

1. The Appellant **MOSES MWONGERA** pleaded guilty to one count of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act. He was convicted and sentenced to 20 years imprisonment. Being aggrieved by the conviction and sentence he filed this appeal. He has raised six grounds of appeal as follows:
  - a. **That I pleaded guilty to the charge thus saving courts time and resources.**
  - b. **That I am truly remorseful and repentant after knowing my misconduct which I will never repeat.**
  - c. **That the offence was not premeditated as in my traditional culture girls marry young and the alleged victim was betrothed bride to be.**
  - d. **That I am only son of my parent and my mother is the only one alive who is aged and unable to support her without help.**
  - e. **That I have surrendered my life to Jesus and desire to be a role model to my age mates and educate others on the demerits of underage brides.**
  - f. **That I pray for a non custodial sentence reduction and or acquittal as the sentence is harsh and unbearable.**
2. In his address before the court the Appellant submitted that he was not challenging the conviction and that he was only appealing against the sentence. He said that even though he knows that he did wrong he has admitted his offence. He urges that the sentence of 20 years imprisonment is

- too long and urges the court to reduce it.
3. Miss Mwangi appeared for the State and opposed this appeal. Counsel urged that the sentence of 20 years imprisonment was very lenient since the law provided life imprisonment. Counsel also urged that the Appellant was not remorseful and asked the court to note that Appellant had also caused grievous injuries to the complainant.
  4. I have considered this Appeal. The Appellant was charged of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act. That Section applies to defilement of a child of between 12 and 15 years of age and provides that a person convicted under that subsection is liable to imprisonment for a term not less than 20 years.
  5. The Appellant admitted the offence. The prosecution produced the P3 form which under section (a) is filled by a Police Officer at a Police Station gives the age of the complainant as 10 years. The doctor did not however, give any assessment of the complainant's age. However the Appellant in his mitigation stated that the child was 11 years old. The issue of age was not established since the Appellant admits that she was a young girl and gives her age as 11 years. I will overlook the issue of age and let the charge contrary to 8(3) of the Sexual Offences Act Pass. It is beneficial to the Appellant that he was charged under subsection (3) of defiling a child of between 12 and 15 years rather than under (2) of defilement of a child of 11 years or less as this has a bearing to the sentence. I have noted that the Appellant is not challenging the fact that he had sexual intercourse with the complainant. He not only admitted having had sexual intercourse on the day in question but alleged that it was not the first time.
  6. About having had sexual intercourse with the complainant before that is not true as the injuries noted on the vulva were a proof that it was the first time. In addition the complainant was found to have HVS pus cells and spermatozoa with foul smelling discharge which according to the P3 form was evidence of contraction of sexually transmitted ailment for which the complainant was put under medication.
  7. The Appellant admits that he defiled the complainant even though that is a mitigating factor that should go to the benefit of the Appellant, he infected the complainant with a sexually transmitted disease which negates that mitigation. In the circumstances I find that the offence was aggravated. The Appellant was also given the minimum imprisonment term for this offence. In the circumstances I find no merit in this appeal and I accordingly dismiss it.

**DATED SIGNED AND DELIVERED AT MERU THIS 23<sup>rd</sup> DAY OF OCTOBER, 2013.**

**J. LESIIT**

**JUDGE**