



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 58 OF 2012

M W M..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 163 of 2010 of the Senior Resident Magistrate's Court at Wundanyi – **Hon. Orange - RM**)

JUDGMENT

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

The brief facts of this case are that on diverse dates between 4th August, 2009 and 31st November, 2009 the appellant had carnal knowledge of the Complainant a girl aged fifteen (15) years old an act which culminated to pregnancy.

The Complainant was staying in the Appellants house. She was a sister to his wife. It was her evidence that during the night he would go to her room and proceed to have sexual intercourse with her before going back to his bedroom. This state of affairs continued till the time she realized that she was pregnant and the matter was reported to police and the appellant was arrested and charged with this offence.

It is noted that the complainant did file an affidavit in court which contains serious averments which the court is of the view that it ought to be tested.

Section 358 (1) of the Criminal Procedure Code provides,

“ In dealing with an appeal from a subordinate court, the High Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a subordinate Court”.

I accordingly order for taking of the evidence of the Complainant by this Court. Summons to issue accordingly.

Judgment delivered dated and signed this **23rd** day of **October, 2013**.

.....

M. MUYA

JUDGE

23RD OCTOBER, 2013

In the presence of:-

The learned State Counsel Miss Ogweno

Learned Counsel for the defence absent

Court clerk Musundi

COURT:

Hearing 6th December, 2013. Notice to issue to Mr. Mwawasi.

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M. MUYA

JUDGE

23RD OCTOBER, 2013