



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 276 OF 2010**

**MUSA SAIDI ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From original Conviction and Sentence in Criminal Case No. 507 of 2009 of the Senior Resident Magistrate's Court at Taveta – Hon. Ndegwa - SRM)**

**JUDGMENT**

The applicant was Convicted and Sentenced to life imprisonment for the offence of defilement of a girl contrary to section 8(1) as read with Section 8(3) of the Sexual offences Act No. 3 of 2006.

The particulars are that on the 17th day of October, 2009 at about 3:00 pm at [Particulars withheld] area Taveta County had unlawful carnal knowledge of one A R S a girl under the age of eleven years.

A perusal of the record of proceedings shows that before receiving/accepting the Complainants evidence a voire dire examination was done properly. The trial magistrate was satisfied that the child understood the meaning of an oath.

Though the Complainant did not give a graphic explanation as to whether there was penetration or not, she did testify of how the Accused met her on her way to play at Mdidas place and grabbed her by the hand and took her to nearby bushes where he proceeded to remove her clothes skirt and underpants, lowered his trousers to the knee level but Mama K caught them in the act and when she screamed members of public were attracted to the scene and they were taken to police station. PW 2 and PW 3 Husband and wife were on the way to their farm when they found the Appellant lying on top of the Complainant who was facing upwards. The appellant had lowered his trousers to the knee level and having sexual intercourse with her. They screamed for help and members of public arrested him and he was taken to police station.

When the Doctor examined her he found her clothes were dirty with dried mud, the genitalia had soil and pieces of twigs around the vulva. The labia minora on both sides was reddish in colour. The hymen had been broken. The birth canal was also reddish. Upon examining the appellant he found soil at the tip of his penis.

The Appellants defene was that PW 2 bore a grudge against him. It is noted that during cross-examination the appellant never alluded to the issue of the grudge but instead opted not to ask the witness no question at all. This issue of a grudge is therefore an afterthought. The incident took place in broad

daylight. The appellant was known by the Complainant before he was caught red handed in the act by PW 2 and PW 3 and arrested there and then and taken to police station. The Doctors evidence was to the effect that there was penetration. Both Complainants vagina and the appellants penis were soiled with mud and he was of the opinion that there was penetration even if partial.

The evidence before the trial Court was overwhelming. The Conviction was safe.

The appellant is shown to be aged fifty four (54) years whereas the Complainant is seven (7) years.

The Sentence of life imprisonment is legal as well as deserved. The appeal has no merit and is disallowed.

Judgment delivered dated and signed in open Court this **20th** day of **November, 2013**.

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**M. MUYA**

**JUDGE**

**20TH NOVEMBER, 2013**

**In the presence of:-**

Learned State Counsel Mr. Tanui

Thee Appellant present

Court clerk Musundi