



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.260 OF 2007

LEONARD KITUR.....
.....APPELLANT
VERSUS
REPUBLIC.....
.....RESPONDENT

[An Appeal from original conviction and sentence in Nakuru C.M.A.C.R.C.NO.251 of 2007 (K) by Hon M. W. Onditi, Snr. Resident Magistrate dated 19th November, 2007]

JUDGMENT

The appellant was convicted on his own plea of guilty and sentenced to serve 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**.

He has challenged the conviction and sentence. Although by dint of **Section 348** of the **Criminal Procedure Code** no appeal is allowed in the case of a conviction on a plea of guilty, except to the extent of legality of the sentence, it is not settled that that section is a complete bar to appeals from persons convicted on their own admission. See **Abanus Mwasia Mutua V. Republic**, Criminal Appeal No.120 of 2004.

Apart from challenging the sentence, the appellant has also raised the following two grounds:

- i) that he did not understand the language used during the plea;
- ii) that he did not commit the offence.

Learned counsel for the respondent opposed the appeal. He submitted that the appellant admitted both the charge and the facts after the same were translated to him in Kalenjin language; that in view of the age of the child victim (3½ years), twenty (20) years imprisonment was lenient.

I have considered the grounds of appeal and the foregoing submissions. I have no doubt in my mind that the plea of guilty was unequivocal for these reasons. When the appellant appeared in court on 19th November, 2007, he himself told the court that he understood Kiswahili language but was better off in Kalenjin language. An interpreter, Carolyn Bartilol was availed. The charges were read to the appellant who admitted them and also confirmed the facts to be true. The appellant mitigated before sentence expressing his regret and undertaking not to be involved in criminal acts.

I find no merit in this ground of appeal. Similarly, he cannot now turn around to deny the offence after

admitting it. Indeed in his written submissions to this court he had attributed his conduct in committing the crime to peer pressure.

The sentence was both lawful and lenient. The appeal is dismissed.

Dated, Signed and Delivered at Nakuru this 23rd day of February, 2012.

**W. OUKO
JUDGE**