



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO.337 OF 2008

SAMUEL OTIENO JUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

**An Appeal from original conviction and sentence in Nakuru C.M.CR.C. No.227 of 2008 by Hon.
H.O. Barasa, Resident Magistrate**

JUDGMENT

Samwel Otieno Juma (the appellant) was convicted on his own plea of guilty, on a charge of defilement of a girl contrary to **Section 8(1)** as read with **Section 8(3)** of the **Sexual Offences Act**. The particulars of the charge stated that on 5th day of December 2008 at L[.....] in Nakuru District within Rift Valley Province, he unlawfully and intentionally caused the penetration of his genital organ into the genital organ of E.A, a child aged 14 years. Having admitted the main charge, then the alternative charge of indecent act contrary to **Section 11(1)** of the Sexual Offences involving the same child, was not read to him.

The prosecutor narrated the facts to the trial court that, on 5th December 2008 at about 6.00 p.m., the complainant, E.A aged 14 years went to look for firewood in a nearby bush. The bush was near the appellant's house. In the process of looking for firewood, the appellant ambushed her and held her. He pinned her down to the ground and removed her clothes by force. He then raped her, inserting his penis into her vagina. After completing his act, he released the complainant who reported the incident to her mother, M.O who in turn made a report to Solai police station. She was duly issued with a P3 form and E.A was examined by a doctor. The P3 form was duly filled on 7/12/2008 as an exhibit. The appellant was then arrested and charged with the offence.

Appellant's response was:

“The facts are correct. It is true I defiled the complainant.”

The court thus entered a plea of guilty and appellant was convicted. The prosecution informed the court that he was a first offender and in mitigation appellant stated:

“I shall not repeat the offence.”

The trial court took into account his mitigation and the nature of the offence plus the circumstances under

which it was committed and sentenced appellant to 35 years imprisonment.

Appellant now appeals against the findings of the trial court on grounds that:

- (1) He pleaded guilty without knowing the consequences.
- (2) The trial magistrate erred in failing to consider that there were no competent reasons for such a heavy sentence of 35 years given that there was no use of force or threats.
- (3) He prays for leniency.

The appeal is opposed, and Mr. Omutelema, on behalf of the State submits that appellants was convicted on his own plea and the circumstances called for a stiff sentence.

Appellant in his written submissions argued that the trial court did not take into account that he was a first offender and was remorseful.

I have perused the trial court's record, the plea was unequivocal, the charge was read out and interpretation was in a language appellant understands and was his language of choice even on appeal.

Under Section 8(3) of the Sexual Offence Act:

“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.”

This is a young girl who was robbed off her innocence while running errands for her mother and given the circumstances under which the offence took place, I really find no reason to interfere with the sentence at all – in my opinion the circumstances and nature of the offence warranted the sentence which was meted out. The upshot then is that the appeal has no merit and is dismissed. The conviction was safe and I uphold, the sentence is legal and I confirm it.

Delivered and dated this 10th day of February, 2012. at Nakuru.

**H.A. OMONDI
JUDGE**