



BRIAN OSORO NYAMARERI APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGMENT

(Being an appeal from the conviction and sentence of the Chief Magistrate’s Court at Kisii, Hon. C. A Mbogo in Criminal Case No. 1671 of 2008 dated 11th August, 2008)

The appellant **Brian Osoro Nyamareri** was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the **Sexual Offences Act, 2006**. He committed the offence on 20th day of May 2008 at [particulars withheld] Kisii Central District within Nyanza Province. The victim **E. M** was a girl aged 12 years. The appellant was arraigned in court on 11th August, 2008. He pleaded guilty to the charge.

The facts of the case which were read to the appellant were that on the 20th May, 2008 at about 1.00p.m he accosted the complainant near a posho mill at [particulars withheld] trading centre, pulled her into a nearby rental house and had intercourse with her. He covered her mouth with his hand when she tried to scream. After having sexual intercourse with her he told her to leave and not to tell anybody about the incident. She later reported to her father who took the action of reporting the incident to the police and taking her to Kisii Level 5 hospital where she was examined and treated. The appellant was later arrested and charged. A P3 form in respect of the complainant was produced as an exhibit. The appellant confirmed the facts and was convicted on his own plea of guilty. He was sentenced to serve 20 years imprisonment.

On 23rd September 2009, the appellant filed his petition of appeal. He has appealed against both conviction and sentence. In the grounds of appeal he states that the court did not warn him of the seriousness of the offence and did not give him an opportunity to take plea after the initial tension. He has further stated that the police officers misled him into admitting the offence.

Mr. Mutuku learned counsel for the state opposed the appeal. He submitted before the court that the accused had been convicted on his own plea of guilty and therefore could not appeal against conviction. He further submitted that the plea was unequivocal and that the sentence was lawful. He urged the court to dismiss the appeal. In response the appellant prayed for forgiveness stating that he will not commit another offence again.

I have considered the record. The appellant was convicted on his own plea of guilty. The record shows that the appellant was arraigned in court on 11th August 2008. When the charge was read to him he answered, *“It is true I unlawfully defiled the complainant”*. The court entered a plea of guilty (See proceedings on file cover). Immediately thereafter, the prosecutor read the facts. When the accused was asked to respond he replied: *“The facts are correct”*. The court then entered a plea in the following words: *“Accused is hereby convicted on his own plea of guilty”*. As such by dint of Section 348 of the

Criminal Procedure Code he cannot appeal against conviction. A P3 form was produced as an exhibit. It indicates that the complainant had a lacerated hymen, lacerated labia and perineal tears consistent with penetration. The appellant was known to the complainant. I am satisfied by my thorough scrutiny of the record that the plea was unequivocal. See **Adan –vs- Republic (1973) E. A 445**.

The age of the appellant was indicated as 12 years. Under section 8(3) defilement of a child of twelve to fifteen years attracts a minimum sentence of 20 years. On that score the appeal against sentence must fail. The sentence was lawful. Indeed the accused was given the minimum sentence. This court's hands are tied.

In sum, and for the foregoing reasons the appeal is found to lack merit and is dismissed accordingly. The conviction and sentence of the lower court is upheld.

Judgment dated, signed and delivered at Kisii this 27th day of September, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

Brian Osoro Nyamareri :appellant (present/absent)

..... :counsel for respondent (present/absent)

Edwin Mongare :court clerk

R. LAGAT-KORIR
JUDGE