



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Criminal Appeal 141 of 2009**

**DANIEL ANGORE .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

(From the Original Conviction and Sentence in the Criminal Case No. 1879 of 2008 of the Chief Magistrate's Court at Mombasa – T. Mwangi – SRM).

**JUDGMENT**

**DANIEL ANGORE KATANA** (the appellant) was Convicted and Sentenced to serve a term of ten (10) years imprisonment for the offence of defilement of a girl contrary to Section 8(3) of the Sexual offences Act No. 3 of 2006.

The appellant in the year 2007 was an employee of the complainant's father as a Herdsboy. According to the evidence of the complainant he was staying in their compound and on several occasions between the months of September and December 2007 he had sexual intercourse with her as a result of which she got pregnant. At the time of this incident she was aged fifteen (15) years and when she was interrogated by, her parents as to who had impregnated her. She mentioned the appellant. When appellant got wind of the report to police, he vanished only to be re-arrested after police had arrested him for another similar offence.

It is quite clear from the evidence before the court that the appellant was in relationship with this child of fifteen (15) years. Were it not for the pregnancy no one else would have been the wiser.

PW 4 Doctor Ngone of Coast General Hospital examined the complainant. A pregnancy test was done which revealed that it was 29 weeks old by 4th June, 2008.

It is observed that no D.N.A test was done to establish paternity. However, failure to do so does not substantially affect the prosecution case.

A **Voire dire** test was done by the trial magistrate before he satisfied himself that the child understood the nature of an oath. This was a standard eight pupil who from her evidence appears knowledgeable. She was aware that the Accused had fled and sought employment elsewhere at Bamburi, committed another offence of defilement and was arrested.

During cross-examination the appellant did not appear keen to contest these allegations and indeed in his unsworn evidence in defence he conceded to most of the allegations by the complainant.

The complainants father (PW 2) did tell the trial Court that,

**“On examination she was found to be pregnant. I asked her but she refused to tell me who was responsible. In the course of investigations the Accused quit employment. In 18th June 2008 he sent elders to negotiate dowry”**

This act of sending elders to negotiate dowry in African Traditions, in circumstances as those found in this case is an admission that the appellant was the one who had impregnated the complainant.

Upon a careful evaluation of the evidence adduced before the trial magistrate I am satisfied that he arrived at the correct conclusion.

It is noted that the Accused is serving another sentence over a similar offence In Criminal case No. 1852 of 2008.

In the present case he was Sentenced to a term of ten (10) years imprisonment whereas section 8(3) of the act provides for a term of not less than twenty (20) years. The sentence of ten (10) years is therefore deemed illegal and is enhanced to twenty (20) years imprisonment. This sentence will run concurrently with the one he is serving in the other similar offence. His appeal has no merit, and it is accordingly dismissed.

Judgment read, dated and delivered in open court this **8th** day of **November, 2012**.

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**M. MUYA**  
**JUDGE**

**In the presence of:-**

Mr. Gioche for the state

Musundi court clerk

Accused.