

REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 285 of 2011

DANIEL NKUJU LEIYAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No.949 of 2012 of the Chief Magistrate's Court at Narok – S. B. ATAMBO, SRM)

JUDGMENT

Daniel Nkuju Leiyan alias Oltuwaa, the appellant, was on 17/11/2011, convicted for the offence of defilement of a girl under the age of 11 years contrary to **Section 8(1) and (2) of the Sexual Offences Act No. 3 of 2006**. He was sentenced to serve life imprisonment. Aggrieved by the conviction and sentence, he preferred this appeal. At the hearing of the appeal, the appellant presented to the court another petition in which he substituted the earlier grounds of appeal. In the supplementary petition, he only seeks leniency for reasons that he is remorseful, a first offender, he has learnt his lesson and will never repeat such offence again; he beseeches the court to exercise its discretion and give him a non-custodial sentence so that he can reconstruct his life.

Ms Idagwa the learned State counsel opposed the appeal for reason that the complainant was 6 years old and the sentence meted out on the appellant is the only one available in law.

In the instant case, the complainant was a child aged 10 years. The appellant was employed by the complainant's parents as a herds-boy. The appellant asked the complainant to look after the goats as he went to fetch some salt for the goats. On returning with the salt, the appellant got hold of the complainant in a thicket and defiled her. What he did was something he had premeditated, he tricked the complainant into going to look after the goats so that he could get the opportunity to abuse her. His actions were intentional and inexcusable. **Section 8(2) of the Sexual Offences Act** provides for a mandatory sentence of life imprisonment. I hereby dismiss the appeal and confirm the sentence. It is so ordered.

DATED and DELIVERED this 20th day of December, 2012.

**R.P.V. WENDOH
JUDGE**

PRESENT:

The appellant – in person
Mr. Marete for the State
Kennedy – Court Clerk