



## REPUBLIC OF KENYA

### CRIMINAL APPEAL NO 185 OF 2010

**SAMSON MUIRURI MBUGUA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

### J U D G E M E N T

Samson Muiruri Mbugua , the appellant herein, was charged with the offence of defilement of an imbecile, contrary to section 146 of the Penal Code as read with section 48(3) of the first schedule to the Sexual Offences Act , No 3 of 2006. It is alleged that on 24/2/2005 at K[...] village in Naivasha District, he had carnal knowledge of T.W.N., a girl who to his knowledge , was an imbecile. In the alternative, he was charged with indecent assault on a female, contrary to section 144(1) of the Penal Code as read with section 48(3) of the Sexual Offence Act, no 3 of 2006. He also faced a 2<sup>nd</sup> charge of failure to attend court contrary to section 23(1) of the police Act. That on 27/4/05, at Naivasha court failed to attend court CMC2500/05.

The prosecution called a total of 8 witnesses in support of the case and the appellant gave an unsworn statement in his defence . He called no witness. The appellant was convicted of the offence of defilement and sentenced to 14 years imprisonment and on the second charge, he was fined Ksh500 in default one month imprisonment . Sentences were ordered to run concurrently .

Being aggrieved by that sentence, the appellant preferred this appeal in which he contends that the sentence of 14 years is excessive. He prays that the same be reduced on humanitarian grounds. He filed submissions in which he claims to have learnt a lesson and has changed his life and prays to be released so that he can go and look after his child who was born as a result of his action. He also claims to be unwell and should be considered for probation.

The appeal was opposed. Mr Omwega appearing for th state urged the court to dismiss the appeal because sentence is not illegal .

A child was born out of the act of defilement which the appellant now admits. Section 146 of the Penal code under which the appellant was convicted imposes a maximum sentence of 14 years. In his Mitigation in the trial court, the appellant gave the same reasons he now advances as grounds that he was going to take care of the child who was born out of the heinous act . Apart from the complainant being an imbecile, she was also a minor aged 14 years of age. The appellant is not deserving to serve a probation sentence and there are no sufficient grounds adduced by the appellant to merit the court interfere with the sentence. The sentence is upheld and the appeal is hereby dismissed.

**DATED AND DELIVERED THIS 17<sup>TH</sup> DAY OF JUNE 2011.**

**R P V WENDOH**

**JUDGE**

**PRESENT**

Appellant present in person

Mr Omutelema for state

CC: Kennedy Oguma