



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 300 OF 2008**

*(From Original Conviction and Sentence in Criminal Case No. 171 of 2006 of the Senior Resident Magistrate's Court at Kwale: **Maindi S.S. – R.M.**)*

**RUMBA NYAMAWI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

The Appellant **RUMBA NYAMAWI** has filed this appeal challenging his conviction by the learned Resident Magistrate sitting at Kwale Law Courts. The Appellant was arraigned before the trial court on 26<sup>th</sup> January 2006 on a charge of **COMMITTING AN UNNATURAL OFFENCE CONTRARY TO SECTION 162(a) OF THE PENAL CODE**. The particulars of the offence were that:

***“On the 30<sup>th</sup> day of October 2005 at about 5.00 p.m. in Kwale District within Coast Province, had carnal knowledge of N.K a child aged 7 years against the order of nature”***

The charges having been read out and explained to the Appellant in Kiswahili he responded:

***“True”***

Thereafter the prosecutor read out the facts of the case as required by law. After listening to those facts the Appellant responded:

***“Facts are correct”***

The learned trial magistrate then proceeded to convict the Appellant based on his own plea of guilty as provided for by S. 207 (2) of the Criminal Procedure Code. After listening to the Appellant's mitigation the trial magistrate sentenced the Appellant to serve a term of twenty (20) years imprisonment. It is against this conviction and sentence that the Appellant now appeals.

Mr. Onserio learned State Counsel opposed the appeal.

I have carefully perused and considered the written submissions made and filed by the Appellant. He submits that the charge sheet was defective in that it did not bear the rubber stamp of Lunga Lunga Police Station. This ground has no merit whatsoever. I have perused the original charge sheet and I note that it bears the rubber stamp of Lunga Lunga Police Station. I dismiss this ground of the appeal. I am

satisfied that this plea of guilty was properly recorded. The Appellant made an unequivocal plea of guilty to the charge. The language used was Kiswahili which the Appellant has confirmed that he understands. The facts were read out and the complainant's P3 form was duly produced as an exhibit and the Appellant maintained his plea of guilty. I find that the Appellant's conviction was proper and I do confirm the same.

After conviction the Appellant was accorded an opportunity to mitigate. The record indicates that his mitigation was given due consideration. The Appellant did in the words of the trial magistrate commit a '**beastly**' act of sodomy on a young innocent child. The P3 indicates that tears and bruises were noted on the anus of the child and the injury was classified as '**maim**' which means that the child will live with the scars of this incident for a long time. Sexual offences against minors are unfortunately on the increase in our society and as such deterrent sentences are called for. The twenty (20) year sentence was in my view both lawful and appropriate. I have no inclination to interfere with this sentence and do uphold the same. The upshot is that this appeal fails in its entirety. The conviction and sentence of the lower court are confirmed and upheld.

**Dated and Delivered in Mombasa this 16<sup>th</sup> day of June 2011.**

**M. ODERO**  
**JUDGE**

In the presence of:  
Mr. Onserio for State  
Appellant in person