



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRA NO. 1 OF 2005

LESIIT, J

NAHASON GITUMA SOLOMONAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Nkubu SRM'S case No. 999 of 2004 – NDUKU NJUKI(SRM))

JUDGEMENT

The appellant NAHASON GITUMA SOLOMON was charged with defilement of a girl contrary to Section 145 (1) of the Penal Code. He pleaded guilty to the charge and was convicted of the offence and sentenced to life imprisonment. He now appeals against the sentence.

Mr. Kimathi, learned counsel for the state urged the court to consider that the child defiled was 5 years old. He urged that the life of the child was destroyed.

I have considered the appellant's appeal. Mr. Kimathi made a statement that the complainant's life was destroyed. That statement should not be made from the bar. It should be supported by a Victim Impact Statement or Doctor's report. That is not to mean that the court does not take a serious view of the offence. The court appreciates the gravity of the offence charged.

The appellant was taken before Nkubu Senior Resident Magistrate court as 27th April 2004 charged with this offence. He pleaded guilty the same day and was sentenced the same day.

At the date of sentence that is 27th April, 2004, the law applicable was the Penal Code. Indeed the appellant was charged under Section 145 (1) of the Penal Code. The sentence for the offence under the Penal Code had been enhanced from **“Imprisonment with hard labour for fourteen years with or without corporal punishment”**. to **“Imprisonment for life.”**

The appellant was convicted on his own plea of guilty. Not only did he save court's time but also proved he was remorseful for the offence. No medical record was produced and the court had no opportunity to see the complainant. There is therefore uncertainty about her real age.

The offence is indeed serious at time of offence. The applicant has so far served 7 years and 3 months.

The learned trial magistrate gave an illegal sentence, only by omitting to order hard labour. In addition to imprisonment for life.

I allow the appeal by setting aside the imprisonment for life and substituting it with imprisonment for 10 years with hard labour from the date of sentence in the lower court. Those are my orders.

Dated signed and delivered this 28th day of July 2011.

LESIT, J
JUDGE