



**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL NO.39 OF 2009**

(Appeal originating from BGM CM CR. NO.186 of 2009)

SAMUEL JUMA MANYONGE.....APPELLANT

~VRS~

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant Samuel Juma Manyonge was convicted by Bungoma Resident Magistrate of the offence of an indecent act with a child contrary to section 11 (1) of the Sexual Offences Act. He was sentenced to serve fifteen (15) years imprisonment.

In his amended grounds of appeal the Appellant dwells more on the sentence than the conviction. He pleads with the court to give him a lenient sentence so that he may join the rest of his family and follow up inheritance of his elderly parents' property. The Appellant has also complained that his constitutional rights were denied when police detained him for seven days in police custody.

Although the Appellant does not raise the issue of conviction, I will briefly look at the evidence on record. The State Counsel Mr. Okeyo holding brief for Mr. Ogoti opposed the appeal. He argued that all the ingredients of the offence were proved and that the sentence was lawful and not excessive.

The complainant was aged six years according to the age assessment report and the P.3 form. She testified that she knew the Appellant well before the incident. She had gone to collect firewood at mama Ben's land when the Appellant came and carried her in his hands. He took her to the bush and undressed her. The Appellant had sexual intercourse with her as he held her neck. The Appellant then squeezed the complainant's private parts using a stick and blood oozed from therein. After the incident, PW3 took the complainant to hospital. PW5 Dr. Omondi examined the complainant. He found that her clothes were soiled and that she was bleeding from her genitalia. The evidence of the complainant was corroborated by that of PW2 and PW4. PW2 found the Appellant in the bush with the child and the Appellant ran away on seeing her. PW3 had also seen the Appellant with the child. He called PW3, PW2, and PW4 who took the child to hospital. The medical evidence was such that penetration was partial. The learned magistrate convicted the Appellant on the alternative charge. The court found that the bruises in the girl's genitalia were caused by the stick which the Appellant used to squeeze her private parts.

I am satisfied that the offence of an indecent act with a child was proved beyond reasonable doubt. The evidence of the complainant was corroborated by that of the doctor and that of PW2, PW3 and PW4. The conviction was safe and it is hereby upheld.

Section 11 (1) of the Sexual Offences Act provides for a sentence of imprisonment of not less than ten (10) years. The sentence imposed of fifteen (15) years is reasonable and within the law. The offence was a serious one given the tender age of the child. I accordingly uphold the sentence.

The Appellant was arrested on 18/10/2009 and arraigned in court on 23/10/2009. Under the repealed

constitution, the remand in police custody was limited to 24 hours. The Appellant was therefore over-remanded for four (4) days. This issue was not raised in the High Court and the prosecution did not explain the delay for the simple reason that the Appellant did not raise the issue. The Appellant has a remedy in civil proceedings for compensation under section 72 (6) of the repealed constitution.

I find that the appeal has no merit and I dismiss it accordingly.

**F. N. MUCHEMI
JUDGE**

Judgment delivered in open court this 18th day of July, 2011 in the presence of the Appellant and the state counsel.

**F. N. MUCHEMI
JUDGE**