



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Criminal Appeal 150 of 2007**

**(From original conviction and sentence in Criminal Case No.710 of 2007  
the Senior Principal Magistrate's court at Narok –S.M. GITHINJI, PM**

**SIMON NDUNGU NJENGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, **SIMON NDUNGU NJENGA**, was charged with the offence of defilement contrary to **Section 8(1)** as read with **Section 3** of the **Sexual Offences Act No. 4 of 2006**. He was charged that on 29<sup>th</sup> June 2007 in Narok District within Rift Valley Province he intentionally and unlawfully committed an act which caused penetration with S.T, a girl aged 13 years. He pleaded guilty to the charge and was sentenced to 20 years imprisonment. He has appealed against both the conviction and sentence.

In his submissions the appellant started by claiming that his constitutional rights under **Section 72(3)** of the **Constitution** were trampled upon when he was held in custody for a period of six days from 30<sup>th</sup> June 2007 to 6<sup>th</sup> July 2007 before he was taken to court.

Regarding his plea of guilty he contended that the same was not unequivocal. This is because the trial court failed to warn him of the dire consequences of a plea of guilty and to give him time to mull over the charge before recording a conviction. In the circumstances he urged me to allow the appeal, quash the conviction and set aside the sentence.

Mr. Gumo for the state submitted that there is no merit at all in this appeal. He said the sentence imposed is lawful and the appeal should be dismissed in its entirety.

I have considered these submissions and read the record of appeal. The record shows that the charge was read over and explained to the appellant in Kiswahili language. The appellant has not claimed he does not understand that language. So he understood the charge. The facts were read out in detail and he accepted them as correct and true. Before convicting him the court enquired of his age and the appellant claimed he was 15 years old. The court ordered the assessment of his age and the report was that he was over 18 years old. What this tells me is that the appellant is a dishonest man bent on lying to get off the hook.

The court was not obliged to warn the appellant of the consequences of his plea before recording it for everyman and woman is presumed to intend the consequences of his act. When the appellant defiled the young girl he knew or must have known that he was committing a serious offence which would land him

in prison. So he must have taken a calculated move. I find no merit in his appeal against conviction and I accordingly dismiss it.

The appeal against the sentence is also for dismissal. This is because **Section 8(3)** of the **Sexual Offences Act** provides a minimum sentence of 20 years imprisonment for defiling a child between the age of 12 and 15 years. The child victim in this case was 13 years old.

For these reasons I dismiss this appeal in its entirety.

**DATED and delivered at Nakuru this 28<sup>th</sup> day of January, 2010.**

**D. K. MARAGA**

**JUDGE.**