



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
OF KISII**

**Criminal Appeal 138 of 2009**

(Being an appeal from original conviction and sentence of the SRM's court  
at Ogembo in criminal case No. 883 of 2009 – L.M. Nafula, SRM)

SIKO ANYONA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

The appellant was convicted on his own plea of guilty to a charge of defilement of a girl aged 10 years contrary to **section 8 (1)** as read with **section 8 (2)** of the **Sexual Offences Act, 2006**. He was sentenced to life imprisonment. He was aggrieved by the said conviction and sentence and preferred an appeal to this court.

In his petition of appeal, he stated that there was insufficient evidence that he had committed the said offence. He also stated that the sentence passed was harsh and excessive.

The record of appeal shows that the charge was read out in English and translated into Kiswahili and Ekegusii languages. He admitted that the charge was true. The facts of the case were also read out and the complainant's medical examination report (P3 Form) produced. The appellant admitted that the facts were true.

The age of the complainant is shown on the P3 form and the Treatment Passbook as 10 years.

I am satisfied that the plea was unequivocal. The appeal against conviction is unsustainable.

As regards sentence, the trial magistrate had no discretion to exercise. **Section 8 (2)** of the **Sexual Offences Act, 2006** states as hereunder:

**“8 (2) A person who commits an offence of defilement with a child  
aged eleven years or less shall upon conviction be sentenced  
to imprisonment for life.”**

The sentence that was handed down by the trial court was therefore mandatory and cannot be said to be unlawful, no matter how harsh it may appear.

Consequently, this appeal is dismissed in its entirety.

**DATED, SIGNED AND DELIVERED AT KISII THIS 23<sup>RD</sup> DAY OF MARCH, 2010.**

**D. MUSINGA**

**JUDGE.**

**23/3/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Mutai for the state

Appellant – present

**Court:** Judgment delivered in open court.

**D. MUSINGA**

**JUDGE.**