REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 305 of 2009

JACKSON LEKISHON……..APPELLANT
VERSUS
REPUBLIC……..…….PROSECUTOR
(An Appeal from original conviction and sentence in Narok P.M.CR.C.NO.467/2009 by Hon W. N. Njagi, Senior Principal Magistrate, dated 5th October, 2009

JUDGMENT

The appellant who was charged with defilement of a girl under the age of 18 years contrary to **section 8(4)** of the **Sexual Offences Act**, was upon conviction on his own plea of guilty sentenced to fifteen (15) years imprisonment. He has challenged that decision in this appeal citing eight (8) grounds which can be summarized as follows:

i) the prosecution failed to prove the case against the appellant beyond any reasonable doubt
ii) that the charge sheet was defective and ambiguous
iii) that the P3 form and treatment notes were defective and ambiguous
iv) that the trial court did not ensure that the appellant understood the language used
v) that the court failed to warn the appellant of the consequences of pleading guilty
vi) that there was no independent evidence to corroborate and sustain the charge
vii) that the sentence was manifestly harsh and excessive.

The appellant having pleaded guilty to the charge, grounds (i) and (vi) above are not relevant as no evidence is usually called or presented upon a plea of guilty. Secondly, although **section 348** of the **Criminal Procedure Code** provides that no appeal is permitted where the appellant pleaded guilty to the charge except as to the extent and legality of the sentence, that provision is not a complete bar to appeals from a conviction and sentence arising from a plea of guilty. See **Albanus Mwasia Mutua** Vs. **Republic,** Criminal Appeal No.120 of 2004. According to the facts led by the prosecutor regarding the offence with which the appellant was charged, the appellant penetrated the complainant in December, 2008. At the time the complainant was sixteen (16) years old.

Under **section 8(1)** of the **Act** any act which causes penetration with a child is an offence termed defilement. The term *"child"* in this Act has the same meaning as that assigned in the **Children Act,** namely a person under the age of eighteen (18) years. **Section 8** of the **Sexual Offences Act** creates the offence of defilement and provides punishments depending on the age of the victim.

An offender who commits defilement with a child aged eleven (11) and below is liable to life imprisonment on conviction; with a child between twelve (12) and fifteen (15), to imprisonment for a term of not less than twenty years; while with a child between sixteen

(16) and eighteen (18) years, for a term of imprisonment not less than fifteen (15) years. The above is categorized in the **Act** as **section 8(2), (3)** and **(4).** The appellant was charged under **sub-section 4** which relates to a child between sixteen (16) and eighteen (18) years.

The learned magistrate found as a fact that the complainant was infact over fifteen (15) years at the time of the offence, as she was born on 6th July, 2008. That finding was clearly based on a Child Health Card which was produced as Exhibit 3 at the trial. I am not able to trace it on record as they had been released. That being a finding of fact which has not been contradicted, I also come to the conclusion that

the offence omitted fell under **section 8(4)** aforesaid.

The appellant having admitted the offence, the question of corroboration of evidence did not arise. Similarly there is no legal requirement to warn an accused person of the consequences of pleading guilty in a case such as this.

Regarding the language at the trial, it is enough that there is indication that some language was used and that there was interpretation. It may also be inferred from the proceedings that the appellant faced no language difficulties. It is now a standard practice for the presiding officers to record the language, thus English/Swahili to mean English translated into Kiswahili. The appellant's address in admitting the offence and in mitigation clear
show that he understood the language. His admission was unequivocal that:

> **"……...The facts are true. That is what happened. We had sex severally not once. She was my girlfriend. I did not rape her."**

He did not rely on any of the defences enumerated under **section 8(5)** of the **Act** to make the plea equivocal. The sentence imposed is that provided by the **Act**, not illegal or excessive. The appeal fails and is dismissed

Dated, Signed and Delivered at Nakuru this 30th day of April, 2010.

W. OUKO
JUDGE