



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

Criminal Appeal 148 of 2008

MOSES KOMORAAPPELLANT

VS

REPUBLIC.....RESPONDENT

***(From original conviction and in Criminal Case No. 371 of 2008
Senior Resident Magistrate's Court at Lamu before R. Kithinji - SRM
Court)***

JUDGEMENT

Moses Komora (the appellant) was convicted on a charge of defilement of a child aged between the age of twelve and fifteen years contrary to section 8(3) of the Sexual Offences Act No. 3 of 2006.

The appellant admitted the charge and was sentenced to serve 21 years imprisonment. The particulars of the charge stated that on the night of 23rd and 24th day of October 2008 in Lamu District, the appellant caused his penis to penetrate the vagina of P.A.O a girl aged between the age of 12 years and 15 years. The charge was read over to appellant in Kiswahili and his response was recorded as "*Nakubali - it is true*"

The facts as narrated by the prosecutor were that on 23rd October 2008 , the complainant aged 13, a pupil at M.V Primary School went to sleep in her room. At about 8.00pm, the accused who worked at a posho mill, went to her and knocked the door. When it was opened, he forced the complainant to remove her clothes and threatened her not to scream. He had sexual intercourse with her the whole night, and when morning came, he gave her Kshs. 40/-. The complainant went to school and reported the incident to her teacher. The teacher called her mother and

escorted her to M Police station. The girl was taken to hospital and examined and a P3 form filled. Appellant's respondent was:

"The facts are true. She agreed to have sex with me."

He appealed on grounds that he was coerced by police to plead guilty to the charge.

- (2) That his fundamental rights were violated while he was in police custody
- (3) That he did not understand the charges
- (4) The trial magistrate ought to have warned him against the consequences of pleading guilty to such a serious charge.

At the hearing of the appeal, he opted to withdraw the written submissions, and submitted orally. He claimed to have been beaten by police that he even lost his tooth and he did not comprehend what was going on before the lower court. He alleges that police inflicted injuries on his right forearm and genitals so there was no fairness at the trial and prays that this court orders a retrial.

The appeal is opposed - Miss Waigera (the learned State Counsel) submitted that the plea was unequivocal.

On sentence, she pointed out that under section 8(3) of the Sexual Offences Act, the minimum sentence is 20 years and the State had no objection to sentence being reduced to 20 years.

The record from the lower court does not indicate that appellant complained of any injuries at the time plea was taken. He has shown this court a scar on the right forearm which he says was inflicted by police - but in the absence of medical evidence, there is no telling when that scar came to life.

The plea was unequivocal and I find no reason to interfere with the conviction - I uphold it.

As for sentence - I concur with the State Counsel that the minimum sentence is 20 years and its not unreasonable to reduce the jail term to 20 years - which I hereby do to the effect that the 21 years sentence is set aside and substituted with 20 years imprisonment which shall take effect from the date of conviction.

Delivered and dated this **29th** day of **July 2010** at Malindi.

H. A. Omondi
JUDGE