



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Criminal Appeal 173 of 2007

(From Original Conviction and Sentence in Criminal Case No. 310 of 2007 of the Senior Resident Magistrate's Court at Kaloleni: **Andayi W.F. – S.R.M.**)

**KAHINDI CHARO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The Appellant herein **KAHINDI CHARO** has filed this appeal challenging his conviction and sentence before the learned Senior Resident Magistrate sitting at Kaloleni. The Appellant was arraigned before the lower court on 11<sup>th</sup> July 2007 on a charge of **DEFILEMENT OF A GIRL CONTRARY TO SECTION 8(1) OF THE SEXUAL OFFENCES ACT 2006**. The Appellant faced an alternative charge of **INDECENT ASSAULT OF A FEMALE CONTRARY TO SECTION 6 OF THE SEXUAL OFFENCES ACT 2006**. The Appellant pleaded guilty to the main charge. The prosecutor **INSPECTOR NGOMO**, read out the facts. The Appellant maintained his plea of guilty. The trial magistrate then convicted him and after listening to his mitigation sentenced the Appellant to serve twenty (20) years imprisonment. It is against this conviction and sentence that the Appellant now appeals.

I have carefully perused the proceedings from the lower court. The same were conducted in Kiswahili a language which the Appellant understood very well. This is made evident by his clear answers to the plea. I find that the Appellant entered an unequivocal plea of guilty to the charge. In his own words he said

***“I have understood. It is true I did sexual connection with her and touched her private parts”***

There can be no doubt from this response that the Appellant was fully aware of the nature of the charge he was pleading to. I am satisfied that the learned trial magistrate did follow the procedure as set out in S. 207 of the Criminal Procedure Code in taking the accused's plea. The trial magistrate in recognizing the seriousness of the charge did allow the Appellant time to think about his plea. Despite this the Appellant maintained his plea of guilty after the facts were read out stating

***“Facts are correct”***

The trial magistrate then proceeded to convict the Appellant. The plea was unequivocal and the legal procedures as laid down were properly followed. I find no reason to interfere with this conviction and decline to do so. I hereby confirm the conviction of the Appellant.

The Appellant in making his mitigation stated

***“My intention was that I get married to the girl.”***

That may well have been the Appellant’s intention but the law does not permit the marriage of and/or sexual relations with any girl under the age of 18 years. In this case the complainant was aged only 15 years. The Appellant took advantage of her and in fact impregnated her thus ruining her life and any chances for future education. It is these acts which are targeted and outlawed by the Sexual Offences Act. The trial magistrate sentenced the Appellant to serve twenty (20) years imprisonment which is the lawful sentence provided for by this Act. I do hereby confirm that sentence. Finally this appeal fails. The conviction and sentence by the lower court are hereby confirmed.

**Dated and Delivered in Mombasa this 28<sup>th</sup> day of September 2010.**

**M. ODERO**  
**JUDGE**

Read in open court in the presence of:-

Appellant in person

Mr. Onserio for State

**M. ODERO**  
**JUDGE**  
**28/09/2010**