



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 2 of 2009

BONIFACE SANDE.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

**((Appeal from the decision of Hon. A.B. Mongare ESQ. Resident Magistrate
delivered on 2nd January 2009 at the Chief Magistrate's Court at Eldoret
in Eldoret CMCR. No. 24 of 2009 on conviction and sentence)**

JUDGMENT

I. Background

1. The Appellant appeared before the Subordinate Courts at Eldoret charged with the offence of

Defilement

Contrary to Section 8 (1) as read with Section 8 (3) of the Sexual Offences at No. 3 /2006.

The particulars of offence being:

That on the 29th day of December 2008 at in Lugari District within Western Province intentionally and unlawfully caused penetration with his genital organ namely penis into the genital Organ of O.K --- a child aged 14 years **old.**

2. The Appellant pleaded guilty to the offence and therefore the alternative count of indecent assault was not considered.
3. According to the facts the complainant a 14 year old child born on 12th November 1994 was seen walking irregularly by her mother. She then left home for two days. She was traced on 31st December 2008 to the appellant's house. The appellant was arrested charged and accordingly pleaded guilty to the offence of defilement.
4. The appellant was sentenced to 20 years imprisonment.

II. Appeal

5. Being dissatisfied with the conviction and sentence, the appellant appealed on grounds that:
 - (i) **That he is a first offender and asks
that the sentence be reduced**
6. In reply the State concedes to the appeal that the sentence be reduced.

III. Findings

7. No arguments were presented on the issue of conviction. The appellant prayed that his sentence be reduced.
8. According to law, a 14 year old child who has been defiled attracts a sentence of 20 years imprisonment against the offender. That being the law, prayer against sentence is rejected.
9. The grounds being that a minor cannot give his or her consent for a sexual act to be violated against them. The capacity to consent has been denied by law from such a victim to do so.
10. This appeal stands dismissed on both conviction and sentence.

DATED this 1st day of September 2010 AT ELDORET.

**M.A. ANG'AWA
JUDGE**

Advocate

- (i) J.K. Chirchir, Senior State Counsel instructed by the office of
the Attorney General for the State - Present
- (ii) Bonface Sande (Appellant) in person - Present