



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Criminal Appeal 252 of 2009**

**KIMATHI STEPHEN ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The appellant in this matter was charged before the lower court with the offence of defilement contrary to section 8 (2) of the Sexual Offences Act No. 3 of 2006. After being tried, he was convicted and on 30<sup>th</sup> November 2009 was sentenced to serve life imprisonment. Being dissatisfied with the conviction and sentence, he filed the present appeal. Before the appeal was fixed for hearing, the appellant, through his counsel, filed a Chamber Summons dated 17<sup>th</sup> February 2010. By that application, he sought bail pending appeal. When the application came up for hearing, counsel for the appellant informed the court that the appellant was 17 years old and therefore a minor. The court on 18<sup>th</sup> March 2010 made an order for the appellant to be age assessed. By a report dated 17<sup>th</sup> May 2010, the Meru District Hospital assessed the approximate age of the appellant to be 17 years old. As a consequence of that assessment, the court on 20<sup>th</sup> July 2010 made an order that the appellant be placed at a juvenile home. The parties, that is, the appellant and the respondent were ordered to file written submissions in respect of the appeal. The intention of the court was to fast track the case in view of the alleged age of the appellant. However, when I sat down to consider this appeal, I realized that in all occasions when this appeal has been before me, that is from 19<sup>th</sup> February 2010 up to 26<sup>th</sup> July 2010, the appellant has never appeared before court. I therefore cannot say whether in my estimation that the appellant is indeed 17 years old. It is for that reason that I decline to write the judgment in this appeal and opt for the appellant to be produced before court for the purposes of my satisfaction that indeed he is 17 years old. What is very striking is that the appellant in his affidavit in support of his application for bail pending appeal deponed thus:-

***“That I am young man but married to a house wife and I have two young children who heavily depend on me on their survivor.”***

That deposition cannot be attributed to a minor who is 17 years old. For that reason, I order the appellant, Elias Kimathi Stephen to be produced before court on 14<sup>th</sup> October 2010. On that date, another date for judgment will be given.

Dated and delivered at Meru this 8<sup>th</sup> October 2010.

**MARY KASANGO  
JUDGE**