



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**(MILIMANI LAW COURTS)**

**Criminal Appeal 331 of 2007**

**JUMA RASHID LOLWE.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

Juma Rashid Lolwe was charged with unnatural offence contrary to Section 162 (a) of the Penal Code.

There was an alternative charge of indecent assault of a boy aged 16 years contrary to Section 164 of Penal Code. The appellant was convicted and sentenced to 20 years from 30/5/2007.

The grounds of appeal are that the Trial Magistrate was wrong in considering the contradiction of two doctors Government one and private one. The private doctor failed to prove with evidence he examined him without one of my family. The appeal has overwhelming chances of success conviction and sentence was wholly unjustified. The appellant filed amended grounds of Appeal saying:

- (1) The Trial Magistrate erred in holding the charge against him without finding that the two pieces of medical evidence is

contradictory hence it was unsafe to be used to convict.

- (2) The sentence imposed may be reduced.
- (3) That the sentence is harsh for a first offender.

The child complainant was aged 8 years. Voire dire was carried.

The Trial Magistrate concluded that he can be sworn.

PW1 said on 1/9/06 at around 9.00 a.m. he was looking after goats. He was looking after goats. He was with another small boy. The accused person came, he was cutting tree branches for the goats. He then asked complainant to accompany him and he would give him 50/=. He said the little boy was looking after the goats. The complainant agreed. They entered into a bushy area where they were the two of them only. PW1 knew the appellant. When they entered the bush the accused grabbed PW1 knocked him down. PW1 was covered with a shirt only but was wearing shorts. (Accused) Appellant removed them and sodomised PW1. He did not give Shs. 50/=. The appellant had not sodomized PW1 before. He was taken to police by his father and mother.

PW2 on 1/9/06 at 6 pm said his son came home from what he she inspected his anus and saw it was swollen. He was covered with sheets. The shorts were missing. He said he was sodomized by Juma.

PW1 was given P3 Form. PW3 was Dr Ketra Muhombe working at Nairobi Women Hospital who saw the complainant on 18.9.06.

He said he was sodomized on 1/9/06 by a man he knew. The doctor examined and saw anus creations. The anus was wide. No active bleeding. Dr. did laboratory examination. Blood test was negative. She treated him. The doctor's report was submitted as exhibit.

PW4 was Dr. Kamau Police Surgeon. He examined the complainant interpreter they were talking of the same thing. The evidence of complainant was corroborated by that of the mother. P.W2 his mother examined his anus and saw he was swollen and there was liquid oozing out. Dr. Muhombe examined him and found his oral sphincter was ..... He alleged sodomy. He had no injuries in anal region his genitals were normal.

Defence gave unsworn statement and said he did not commit the offence. He was arrested by elders.

The police case was conducted through the laceration but there was no active bleeding. These findings show complainant was penetrated into through the anus. On examination of the Appellant's defence it is clear it is a mere denial. He said he did not commit the offence.

The prosecution case is straightforward. It is clear and evidence proved beyond reasonable doubt.

I find no reason to interfere with the Trial Magistrate's decision and I do dismiss the appeal.

Dated and delivered at Nairobi this 7<sup>th</sup> day of October 2010.

**J. N. KHAMINWA**  
**JUDGE**

