



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**Criminal Appeal 100 of 2008**

**REUBEN NDUMA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Appeal from a Judgment of the Principal Magistrates Court at Makindu*

*(Hon. B Ochieng PM) dated 22<sup>nd</sup> April 2008)*

**in**

**(PM'S CR.C. No. 344 of 2008)**

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**JUDGMENT**

1. The Appellant herein was charged with the offence of defilement Contrary to Section 8 (1) (3) of the Sexual Offences Act No. 3 of 2006. It was alleged that **“on 17/4/2008 at Kibwezi District within the Eastern Province he committed an act which caused penetration with M.M, a child aged 12 years”**.

2. He admitted the offence and was sentenced to serve twenty years in prison. His appeal was that the plea was not properly taken and the language used is not recorded. However a perusal of the record of proceedings on 22/4/2008 is that the plea was taken in the Kikamba language which the Appellant appeared to understand. He admitted the facts and went on to mitigate by stating thus;

**“The complainant was my girlfriend”**.

3. In this court and in response to submissions by learned State Counsel, he repeated the same assertion by stating;

**“The girl was my girlfriend”**.

4. That mitigation is irrelevant in view of the age of the complainant who was said to be twelve years old and therefore had no capacity to consent to any sexual action in terms of Section 45 of the Sexual Offences Act. In any event from, the record, it was the action of the complainant, by screaming, that attracted a passerby who came to her rescue and the Appellant fled only to be arrested later.

5. Turning to sentence, any offence under Section 8 (1) (3) of the Act attracts a prison term of **“not less than 20 years”**. The Appellant having admitted the offence, was sentenced to that minimum term and there is no discretion left to this court to reduce it.

6. In the end, the Appeal has no merit and is dismissed.

7. Orders accordingly.

Dated and delivered at Machakos this **18<sup>th</sup>** day of **September** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr O'Mirera for Republic**

**Appellant: Present**

**ISAAC LENAOLA**

JUDGE