



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Criminal Appeal 166 of 2008**

STEPHEN MWAU MUTINDA APPELLANT

VERSUS

REPUBLIC RESPONDENT

*(Appeal from a Judgment of the Resident Magistrate's Court at Yatta
(Hon. A.W Mwangi Ag. SRM) dated 7th August 2008)*

in

(SRM'S CR.C. No. 1104 of 2007)

JUDGMENT

1. The Appellant was charged with the offence of defilement under Section 8 (a) of the Sexual Offences Act. He was convicted and sentenced to life in prison.
2. Section 8 (1) does not disclose any offence and has no penalty clause. The import is that the Appellant was unlawfully charged and convicted.
3. However since there is no objection, he will be retried at Machakos CM'S Court.
4. The Appeal is allowed. His conviction is quashed, sentence set aside and he will appear before the SPM Machakos on **13/11/2009**.
5. Orders accordingly.

Dated and delivered at Machakos this **12th** day of **November** 2009.

ISAAC LENAOLA

JUDGE

