

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 7 of 2006

EVANS MUSYOKA NJARUBA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The appellant was charged with an offence of defilement of a girl contrary to Section 8 1 (2) of Sexual Offences Act 2006. He pleaded guilty to the main count and was sentenced to 20 years imprisonment. The facts of the offence which were admitted showed the victim to be 6 ½ years. The accused approached her and gave her ripe bananas. He proceeded to have unlawful carnal knowledge of her. It was in public and the other children witnessed the incident.

The prosecutor produced P3 form which showed that the child was defiled. The appellant now complains that when the charge was read to him he was ill and did not hear charges against him. He asked for retrial and that he was not allowed to mitigate before Judgment. The record shows that in mitigation he said "I pray for forgiveness"

It is therefore false to state that he was not allowed to mitigate. On the issue of pleas of guilty the usual procedure was followed. He was asked to plead. He stated " It is true I defiled the young girl" The facts were read out in full by the prosecutor and a P3 form was produced as exhibit 1. The accused then said "facts are true I defiled the young girl". The Appellant did not raise any objection or information to the court he was sick. The plea is clear plea of guilt. Section 348 C.P.C prohibits any appeal in the case of an accused person who has pleaded guilty and has been convicted on that plea, except as to the extent of sentence. In this case the maxim sentence prescribed by law is life imprisonment. I do not find a sentence of 20 years excessive or harsh.

I therefore do not find any merit in this appeal. The same is dismissed.

Dated this 22nd February, 2008.

J. N. KHAMINWA

JUDGE

22/2/2008

Khaminwa – Judge

Njue – Clerk

Appellant present

Mr. Kimathi present

Judgment read in open court.

J. N KHAMINWA

JUDGE