

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 16 of 2005

(From the original conviction and sentence in the CM'S CR.C.NO.1495/2003 by V.W. WANDERA SRM)

HARON NDUKO MOSES:.....APPELLANT

VERSUS

REPUBLIC:.....RESPONDENT

J U D G E M E N T

The appellant was convicted of the offence of defilement of a girl contrary to S.1`45 (1) of the Penal Code in that on 10th day of February 2003 at 9p.m in Langas Estate Uasin Gishu district unlawfully had carnal knowledge of **EASHER ELIMU LOKIRA** a girl of fourteen years. He was sentenced to fourteen years imprisonment.

Initially the appellant had appealed against conviction. However when the appeal came for hearing he told the court that he wads abandoning his appeal against conviction and would contest appeal against sentence. However when I looked at the grounds he had preferred in his petition they were all against conviction and not sentence but the court allowed him to address it on issue of sentence. He told the court that he wished to mitigate. He told the court to take into account the period he had been in custody and reduce his sentence.

Mr. Chirchir the learned state counsel opposed the appeal on sentence. He said the offence is serious and the maximum sentence is life imprisonment. He said trial court was lenient.

I have carefully considered that appeal on sentence. I do concur with the learned state counsel that the sentence of 14 years imprisonment was lenient. Maximum sentence is life imprisonment. The appellant defiled a girl of thirteen (13) years probably ruining all her future life. The trial court noted that the offence appellant committed was "**heinous**" and deterrent sentence was deserved. The court was quite right on that and I will decline to interfere with the sentence.

Indeed appellant was in custody from 24th February 2002 when he was arrested to 3rd March 2004 when he was convicted a period of about two years but that was not such a long period as to warrant this court interfere with the sentence.

In the circumstances the court finds no merit in the appeal and the same is dismissed.

Dated and Delivered on 7th March, 2008.

KABURU BAUNI

JUDGE

IN THE PRESENCE OF:-

C/C - David

Mr. Chirchir for state

Appellant – Present in person.