



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Criminal Appeal 136 of 2007

CHARLES NDUBI MOCHUMBE APPELLANT

VERSUS

REPUBLIC RESPONDENT

**(From original conviction and sentence of the Senior Resident Magistrate's Court at Nyamira,
Criminal Case No.633 of 2006 by L. Komingoi, SRM)**

JUDGMENT

The appellant was charged with defilement of a child contrary to Section 8(1) (4) of the Sexual Offences Act No.3 of 2006. After a full trial, the appellant was found guilty and convicted. He was sentenced to twenty years' imprisonment.

The appellant was aggrieved by the said sentence and appealed against the same. In his petition of appeal, he stated that he was a first offender and he should have been given a non-custodial sentence. He lamented that the sentence was harsh and excessive.

Mr. Kemo, Principal State Counsel, opposed the appeal. He said that the sentence was neither harsh nor excessive.

I have considered the record of appeal and in particular the manner in which the offence was committed. The complainant was a young girl aged fifteen years old. The appellant pounced on the unsuspecting victim on her way from church, slapped her and dragged her to a bush where he defiled her for about one hour. He had laid a sharp panga beside her and for fear of being killed, she endured the ordeal quietly. Thereafter he forced her to go with him to his house. As he kept the panga somewhere, she got an opportunity to run away. However, he caught up with her and locked her up in a house. Fortunately for the complainant, one of her schoolmates who was outside the house went and reported the incident to the complainant's parents.

From the foregoing, it cannot be said that the sentence passed was harsh or excessive, considering that the maximum sentence for such an offence is fixed at not less than twenty years where the child is between twelve and fifteen years.

I find this appeal unmeritorious and dismiss the same. I confirm the sentence that was passed by the trial court.

DATED, SIGNED and DELIVERED at KISII this 28th day of April, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Kemo, Principal State Counsel for Republic

N/A for the appellant

D. MUSINGA

JUDGE