



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
ATKISII**

**Criminal Appeal 70 of 2004**

**BENARD NYANARO OMAMBIA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From the original conviction and sentence in the Principal Magistrate's  
Court at Nyamira Criminal Case No.135 of 2004 by KIARIE W. KIARIE  
ESQ., P.M.)**

**JUDGMENT**

The appellant was charged with defilement of a girl under the age of 16 years contrary to section 145(1) of the Penal Code.

The particulars of the charge were that on the 21<sup>st</sup> day of February, 2004 at Nyaramba sub-location in Nyamira District, the appellant had unlawful carnal knowledge of D. K. N; a girl child aged 6 years. He was tried, convicted and sentenced to 25 years' imprisonment. He appealed against the sentence saying that it was harsh and excessive.

Mr. Kemo, Senior Principal State Counsel, opposed the appeal. In his view, the said sentence was justified considering the gravity of the offence.

The appellant lured the said child into some nappier grass where he defiled her. When she cried due to the pain which she endured he urged her not to tell her mother, threatening her that her mother would beat her up.

The appellant committed a very serious offence whose maximum sentence is imprisonment for life.

Considering the gravity of the offence, I see no basis of interfering with the sentence that was handed down by the trial court and dismiss this appeal accordingly.

DATED, SIGNED and DELIVERED at KISII this 29<sup>th</sup> day of October, 2008.

D. MUSINGA

**JUDGE.**

Delivered in the open court in the presence of:

1. The Appellant

2. Mr. Kemo, Senior Principal State Counsel for the Republic

**D. MUSINGA**

**JUDGE.**