



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Criminal Appeal 79 of 2007**

**PETER NJOROGЕ MUCHORA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with the offence of **defilement of a girl** contrary to **Section 8(1) of the Sexual Offences Act, 2006**. The particulars of the offence states that on the 2<sup>nd</sup> day of September 2006 at [*particulars withheld pursuant to section 76(5) of the Children Act, 2001*], he had unlawful carnal knowledge of **D. C. K.** a girl under the age of 15 years. The appellant faced an alternative charge of **Indecent Act** contrary to **Section 11(b) of the Sexual Offences Act, 2006**. The particulars of the alternative charge state that on the 2<sup>nd</sup> day of September 2006 at [*particulars withheld pursuant to section 76(5) of the Children Act, 2001*], unlawfully and indecently assaulted **D. C. K.** by touching her private parts (vagina).

The appellant pleaded not guilty to the two charges. After a full trial he was found guilty, on conviction he was sentenced to life imprisonment. Being dissatisfied with the conviction and sentence the appellant appealed. The petition of appeal challenges both the conviction and sentence, but during the hearing of this appeal, the appellant urged this court to consider reducing the sentence. He urged the court to consider his advanced age and the fact that he had never committed an offence again and reduce the sentence.

This appeal was opposed by the State. The learned State Counsel **Mr. Njogu** submitted that the appellant was charged with the offence of **defilement** contrary to **Section 8(1) of the sexual offences Act**, a life sentence is prescribed by the law and that are what was imposed by the trial court. The sentence is appropriate because the complainant was aged 8 years.

This being a first appeal, this court has a duty to re-evaluate the evidence before the trial court and arrive at its own independent determination on whether or not to uphold the conviction and sentence. In so doing, the court should bear in mind that it never saw or heard the witnesses and give due allowance for that. See the case of **Njoroge vs. Republic [1987] KLR 19.**

Briefly stated **D. C. K.** a young girl aged 8 years testified that on 2<sup>nd</sup> November 2006 at 4.00 p.m. she was playing with her friend outside butchery within Salgaa Trading Centre. She went to relieve herself in the toilet, she was accosted by the appellant whom she knew and described his as '*mzee wa mitura*'. He pushed her into the toilet, threatened her not to scream or else he would kill her. He defiled her and gave her ten shillings and warned her not to tell anybody. The complainant spent that night at her friend's house. The next day as she was walking home, **Ruth Mungai PW3**, noticed the complainant was walking with difficulties. She informed **N. C., PW2** the complainant's mother. Both ladies interrogated the complainant. She revealed to them that she had been defiled by the appellant. They saw blood on the complainant's private parts. The complainant was able to identify the person who had defiled her as '*Mzee wa mutura*'. Both PW2 and PW3 escorted the complainant to the Police Station. **PC Shadrack Kigoi, PW4** received the report. The complainant took the Police to Salgaa Trading Centre and pointed out the accused person who was arrested. The complainant was also issued with a P3 form which was completed at the Rogai Health Centre; she was also treated for the injuries sustained.

**Peter Mwangi, PW1** a Clinical Officer attached to Rongai Health Clinic examined the complainant on 14<sup>th</sup> September 2006. He completed the P3 form. Upon examination of the complainant he found that she had bruises on the thigh. There was also swelling of the labia minora her hymen was broken and the urethra was opening. In his opinion, the complainant was defiled. He assessed the degree of injury as harm. He put the complainant on anti-HIV drugs.

Put on his defence, the appellant denied in his sworn statement that he committed the offence. During cross-examination, he admitted that he used to sell soup in the butchery at Salgaa market. He also admitted that he knew the complainant as well as her mother as they used to pass by the market. He denied having had any disagreement with the complainant or the mother. After considering the above evidence, the trial court found that the prosecution had proved the charge against the appellant. The defence by the appellant was found not credible. The appellant was convicted and sentenced to life imprisonment.

Having set out the brief summary of this case, I find no justifiable reason for interfering with the judgement and the sentence imposed by the trial magistrate. The learned trial magistrate duly conducted a *voire dire* examination of the minor witness and was satisfied that she possessed sufficient knowledge to testify. The testimony by the complainant is candid. She was able to identify the appellant who was known to her because he used to make soup outside butchery at the shopping centre. The appellant himself confirmed that he knew the complainant and he was selling soup in the butchery at Salgaa Shopping Centre.

The evidence by the complainant was corroborated in every material aspect by the other witnesses. The medical examination revealed that she was defiled and was inflicted with injuries. The appellant committed such a heinous crime against an innocent child of such tender years. The appellant pleaded for leniency on account of his age. The appellant should have respected his age which ordinarily put him in a position of trust. Having disrespected his own age, acted like a beast, he should not expect the court to be the one to respect him for age. The trauma inflicted upon the young victim will also cause her untold suffering that might impact on her innocent life forever. In the sum total I find no merit in this appeal which I dismiss.

On the sentence, the appellant was charged under the **Sexual Offences Act**, the complainant is a minor aged only eight (8) years and the sentence prescribed by law is life sentence. There is no justification for this court to interfere with the sentence meted out against the accused person. The decision by the trial court is hereby upheld and the appeal is dismissed.

**Judgment read and signed on 14<sup>th</sup> November, 2008**

**M. KOOME**

**JUDGE**