

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Criminal Appeal 148 of 2004

BENARD MBURU MUTHONI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being appeal against conviction and sentence by L. Nyambura, Senior Resident Magistrate, in the Senior Resident Magistrate's Criminal Case No. 807 of 2003 at Muranga)

JUDGMENT

The Appellant at the lower court was facing a charge of defilement of a girl contrary to *Section 145 (1)* of The Penal Code and an alternative charge of indecent assault on a female contrary to *Section 144 (1)* of The Penal Code and a charge of escape from lawful custody contrary to *Section 123* of the Penal Code. He was convicted of the alternative charge of indecent assault. He was sentenced to five (5) years imprisonment with hard labour.

The Appellant was aggrieved with the conviction and sentence and accordingly preferred this appeal. At the hearing of the appeal, the Appellant abandoned his appeal against conviction and instead retained the grounds of appeal on the sentence. Appellant indicated that he was remaining with only 20 days to his sentence before being released. The evidence against the Appellant was that when the complainant was sent to the shop by her grandmother she met the Appellant who took her to his house. At his house he smeared Vaseline to the complainant's private part. The complainant was six (6) years old. On being convicted of the offence of indecent assault the court sentenced the Appellant to five (5) years and hard labour.

I have considered the mitigation offered by the Appellant and I find that I cannot fault the sentence given to him. The maximum sentence was 21 years with hard labour. Accordingly the appeal on sentence is hereby dismissed.

Dated and delivered at Nyeri this 29th day of June 2007.

MARY KASANGO

JUDGE