



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE  
Criminal Appeal 15 of 2005**

**MICAH ETALE OTUNDO.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT**

**(Being an appeal from the original conviction and sentence of H.M. Wandere – RM in Criminal Case No. 813/2005 delivered on 22nd April, 2006 at Kitale)**

**J U D G M E N T**

After pleading guilty to the charge of defilement of a girl contrary to section 145 (1) of the Penal Code, the appellant, MICAH ETALE ODUNDO, was convicted and then sentenced to 10 years imprisonment.

The facts giving rise to the charges preferred against the appellant were that the offence was committed at Maili Saba, Laini Moja in Trans Nzoia District.

On 24/1/2005, the complainant, a young girl named “[*Particulars withheld pursuant to section 76(5) of the Children Act, 2001*]” was left at home. The complainant was 7 years old.

The appellant and another man arrived at the home, when the complainant’s mother was away, and invited her to go and collect some fruits at the banana plantation.

Once the complainant reached the banana plantation, the appellant forced her to lie down and removed her underpants. When the appellant forced the complainant to have intercourse with him, the complainant screamed. The appellant’s co-accused then had carnal knowledge of the complainant repeatedly, until she fainted.

Both accused persons left the complainant in the banana plantation. Later, she limped to her home where she reported the incident to her mother. The complainant gave to her mother the names of her assailants, as Micah and Zacharia.

The complainant’s mother took her for treatment at the Kitale District Hospital.

Later, the appellant and his co-accused were arrested, based on the information which the complainant had given to the police officers at Moi’s Bridge Police Station.

By the date when the accused persons were arraigned in court on 22/4/2005, the complainant was still undergoing treatment.

The appellant admitted the facts of the case. After his conviction, the appellant said that he was 17 years old. That prompted the learned magistrate to direct that the appellant should be taken to hospital for age assessment.

After the appellant's age was assessed, he informed the trial court that he was 18 years old. He also told the court that he did not have any complaint about the fact that the medical officer had assessed his age at 18 years.

It is thereafter that he was sentenced to imprisonment for 10 years with hard labour.

When prosecuting his appeal before me, the appellant submitted that the sentence was harsh. He also said that he was the bread winner in his family. Finally, he said that he would never repeat the kind of offence for which he had been convicted.

The maximum penalty for the offence of defilement of a girl below the age of 16 years was imprisonment for life with hard labour. Therefore, the sentence of ten years imprisonment is well within the law. If anything, the sentence appears to be relatively lenient when it is borne in mind that the victim of the offence was only seven years old.

As the complainant was still undergoing treatment some three weeks after the incident, there can be no doubt that the damage caused to her young body was serious.

Perhaps it was because it was the appellant's co-accused who repeatedly defiled the young girl, that the appellant was jailed for 10 years. But that too appears not to explain the sentence, as the said co-accused was also jailed for 10 years. Had I been the presiding judicial officer at the trial, I would most probably have handed down a more severe sentence.

For now, I note that the trial magistrate did not take into account any irrelevant or extraneous factors during sentencing. I also note that the trial court did not fail to take into account any relevant factor.

In the result, there is no basis, in law, for interfering with the sentence meted out against the appellant. Therefore, the appeal is dismissed. I uphold both conviction and sentence.

Dated and Delivered at Kitale, this 9<sup>th</sup> day of October, 2007.

**FRED A. OCHIENG**

**JUDGE**