



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Appeal 848 of 2003**

**NOOR IBRAHIM ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The Appellant, **NOOR IBRAHIM**, was convicted on his own plea of guilty on a charge of defilement of a girl, contrary to Section 145 (1) of the Penal Code. Upon conviction the Appellant was sentenced to 12 years imprisonment and 12 strokes of the cane with hard labour. The particulars of the charge were that on 27<sup>th</sup> day of September, 2002 at about 10 a. m. at [*particulars withheld*], in Tana River District within the Coast Province, had carnal knowledge of HR, a girl under the age of 14 years.

The Appellant was aggrieved by the conviction and sentence, hence lodged this Appeal. However when the Appeal came up for hearing, the Appellant abandoned the Appeal on conviction but urged the Appeal on sentence. He claimed that the sentence imposed was harsh and excessive. That he was an old man. That he had intended to marry the Complainant but for the interference by other people. That he was a widower, his wife having died and left behind 4 children who are suffering. Finally, the Appellant stated that he had been sufficiently punished for the period he had been in jail.

Miss Gateru, Learned State Counsel opposed the Appeal on sentence. She submitted that the sentence imposed was lawful. It was neither harsh nor excessive. That the Complainant was a young girl of 7 years. Deterrent sentence was therefore called for. The only aspect of the sentence that the learned State Counsel did not support is the 12 strokes of the cane. Corporal punishment having been outlawed by Act No. 5 of 2003, Learned State Counsel opted and rightly so in my view not to support that aspect of the sentence.

I have considered the submissions by the Appellant and by the Learned State Counsel as well as the facts of this case and the law. From the response given by the Appellant when the facts were read out to him, I was minded to hold that perhaps the conviction was equivocal. For he said:-

***“...The facts are correct. I did not use force she agreed...”***

However the Complaint was a girl of 7 years. She is incapable of giving consent. Further the Appellant having abandoned the Appeal on conviction it is not necessary for me to consider the plea any further.

For this Court to interfere with the sentence imposed by the trial Court, it must be shown that the sentence imposed was harsh and excessive. It is also necessary perhaps to show that in imposing the sentence, the trial magistrate took into account extraneous matters or that she/he imposed an illegal sentence. It should always be remembered that when considering appropriate sentence to be imposed, the Court exercises some discretion. The discretion is not exercised capriciously or clandestinely. It is exercised on aforesaid sound principles.

Taking into account all the foregoing, I am not satisfied that the sentence imposed on the Appellant was either harsh nor excessive in the circumstances of the case. Defilement of a girl under the age of 16 years

as in the instant case attracts imprisonment with hard labour for life. The Complainant was a girl of 7 years. Her sexual life has been shattered by this experience. The Appellant was an old man of 50 years. He ought to have known better than engage in a sexual banter with a girl of 7 years fit to be his great grand daughter. I think that twelve years imprisonment with hard labour in the circumstances of the case cannot by any stretch of imagination be viewed as excessive and or harsh. It was certainly lawful and in ones mind deserved. I see no reason to disturb the Lower courts decision. However since corporal punishment has been outlawed by Act number 5 of 2003, that aspect of the punishment requiring that the Appellant to receive 12 strokes of the cane shall not be administered. Other than this aspect of the matter the Appeal on sentence is otherwise dismissed. I confirm the sentence of 12 years imprisonment with hard labour imposed on the Appellant.

Dated at Nairobi this 22<sup>nd</sup> day of March, 2006.

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**MAKHANDIA**

**JUDGE**