



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

**Criminal Appeal 568 Of 2003**

**JOHN MBUGUA CHEGE .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

The Appellant **John Mbugua Chege** was charged with the offence of **defilement of a girl under the aged of 16 years** contrary to **Section 145(1) of the Penal Code** and count two, **indecent assault on female** contrary to **Section 144(1) of the Penal Code**.

After a full trial, the Appellant was convicted of the 1<sup>st</sup> count and sentenced to twenty (20) years imprisonment.

Being dissatisfied with the sentence, the Appellant has filed this appeal but during the hearing he abandoned the appeal against the conviction but pleaded for the reduction of the sentence on the grounds that;

Ø *He is suffering from a chronic illness and his condition has worsened due to the conditions in prison.*

Ø *He is an old man with six children who depended on him and are now faced with the eminent danger of not getting any care or going to school but becoming street children.*

Ø *He is a first offender and highly regrets the circumstance that led him to commit the heinous crime.*

Ø *He therefore urged this court to consider that the sentence of twenty (20) years is too harsh and reduce it to non-custodial sentence.*

On the part of the State, the learned Assistant Deputy Public Prosecutor opposed this appeal.

The Appellant committed a heinous act against a child of tender age. According to the evidence of the medical officer who examined the complainant, she was a mentally challenged child. The appellant took advantage of this condition. Besides the rape, the Appellant also infected the complainant with a sexually transmitted disease.

I have reconsidered this matter and the grounds advanced by the Appellant against the background and the circumstances of the injuries inflicted upon the complainant. The complainant who is likely to suffer the irreparable psychological trauma of rape was also infected with a sexually transmitted disease. The Appellant who claims to be a family man should have acted more responsibly the fact that the complainant is a mentally challenged child and she is under sixteen (16) years aggravates the situation, and in the circumstances the appeal against sentence is without merit and is hereby dismissed.

**Judgment read and signed on 17<sup>th</sup> March 2006.**

**MARTHA KOOME**

JUDGE