

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 72 of 2004

P W N..... APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The Appellant was charged before Principal Magistrate's Court at Nyahururu with the offence of **incest by male** contrary to **Section 166(1) of the Penal code** and an alternative charge of **indecent assault on female** contrary to **Section 144(1) of the Penal Code**.

The Appellant was convicted on his own plea of *guilty*, and sentenced to serve ten (10) years imprisonment.

The Appellant being dissatisfied with the said sentence has now appealed to this court against the sentence.

The particulars of the case can be briefly stated;

On the 7th day of March 2004 at [*name withheld*] village in Nyandarua District, the Appellant being a male person, had unlawful carnal knowledge with [*name withheld*] a female person who was the Appellant's daughter.

The further particulars and facts were stated that on the material date, the complainant, a young girl who is aged about seven (7) years was playing outside with other children. The Appellant was in the kitchen and he called the complainant removed her underpants and his trousers and pants and had carnal knowledge of the complainant. The complainant screamed out of pain and her mother came to her rescue. A report was made at Mairo Inya Patrol Base and the complainant was issued with a P3 form. On examination, she was found to have a ruptured hymen and the degree of injury was classified as *harm*.

It is on the basis of these facts that the Appellant was sentenced to ten (10) years. The Appellant urged this court to reduce the sentence on account that he had reformed and acquired a new skill while in prison and he wishes to contribute positively to National Development.

On the part of the State, this appeal was opposed and the learned Deputy Public Prosecutor pressed for the appeal to be dismissed.

I have carefully considered the facts of this case and the appeal. I hasten to state that the Appellant committed a very heinous offence against his own seven (7) year old daughter.

The Appellant was charged with the responsibility of protecting his own daughter but choose to attack her and inflicted upon her such injury and harm that might inflict and ruin her life forever. The complainant whose life has been ravaged by the senseless attack and invasion of her body will suffer trauma for the rest of her life.

I am also aware that the maximum sentence for this kind of offence as provided by the law is life

imprisonment as I therefore consider the sentence of ten (10) years appropriate.

The appeal is therefore dismissed as lacking in merits.

Judgment read and signed on 17th March 2006.

MARTHA KOOME

JUDGE