



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**Criminal Appeal 93 of 2004**

**(From original conviction and sentence of the Senior Resident Magistrate's Court at Bomet in Criminal Case No. 1293 of 2004 – Nduna SRM)**

**STANLEY KIMUTAI KONES ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant, Stanley Kimutai Kones, was charged with the offence of defilement of a girl under the age of sixteen years contrary to **Section 145(1)** of the **Penal Code**. The particulars of the charge were that on the 2nd of November, 2004 at [*particulars withheld*], Bomet District, the appellant had carnal knowledge of MC, a girl under the age of sixteen years. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted and sentenced to serve fifteen years imprisonment with hard labour. Being aggrieved by his conviction and the sentence imposed on him, the appellant appealed to this court.

In his petition of appeal, the appellant raised basically two grounds of appeal. The first ground is that he was not in his normal senses when he pleaded guilty to the charge as he was under the influence of alcohol. He therefore states that his plea of guilty was not unequivocal. His second ground of appeal is that he was aggrieved by the custodial sentence which was meted out on him. He was of the view that the said sentence was too harsh and excessive putting into consideration the mitigation that he had offered. At the hearing of the appeal, the appellant abandoned the ground of appeal against conviction. He submitted that he admitted having committed the offence. He submitted that he had committed the said offence when he was drunk. He pleaded for the leniency of this court. He submitted that he was married with children and his family relied on him for the sustenance and support. Mr. Koech, Learned State Counsel, opposed the appeal on sentence. He submitted that the sentence meted out on the appellant was commensurate with offence committed as the girl defiled was only four years of age. He submitted that the appeal ought to be disallowed.

I have carefully read the proceedings of the trial magistrate in respect of which this appeal arose. This court is aware of the requirement of the law that it should reevaluate the said proceedings with a view of reaching its own independent conclusion whether or not to uphold the conviction and the sentence meted out on the appellant. The appellant was convicted on his own plea of guilty. The charge was read to him in a language that he understood. The particulars of the charge were explained to him. The appellant confirmed the said facts to be correct. I am satisfied that the plea of guilty that was recorded by the trial magistrate was in accordance with the law. The plea of guilty as recorded by the trial magistrate was unequivocal. At the hearing of this appeal, the appellant admitted to have committed the offence. His explanation, as in the lower court, was that he committed the offence while under the influence of alcohol. I find no merit at all with the said explanation. The appellant was properly convicted on his own plea of guilty. His appeal on conviction is thus dismissed.

On sentence, considering the age of the complainant (i.e. four years), the custodial sentence meted out on the appellant was rather lenient. Even though he was a first offender, the appellant ought to have been sentenced to serve the maximum penalty of twenty one years imprisonment as provided by the law. The appellant was lucky to have been sentenced to serve fifteen years imprisonment. The said sentence

was neither harsh nor excessive. I will not interfere with it. The appeal on sentence therefore lacks merit and the same is similarly dismissed. I therefore confirm the conviction of the appellant and the sentence meted out on him by the trial magistrate.

It is so ordered.

**DATED at KERICHO this 30th day of September 2005.**

**L. KIMARU**

**JUDGE**