



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU

**Criminal Appeal 110 of 2003**  
**(From the original conviction and sentence in Criminal Case No. 474 of 2003 of the Senior Principal Magistrate's Court at Naivasha –L. K. Mutai)**

**KAUNDA OLE MPATRA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant has appealed against the original conviction and sentence in the **Naivasha Senior Principal Magistrate Court No. 474 of 2003**. In that case, the Appellant had been charged for the offence of defilement of a girl under the age of 14 years, contrary to **Section 145 (1) of the Penal Code**.

The Alternative Charge against the Accused is that of indecent assault on female, contrary to **Section 144 (1) of the Penal Code**. The facts of the prosecution case as stated in the Charge Sheet for the main Count are as follows:

**“On the 21st February, 2003 at [particulars withheld] at Kajiado District of the Rift Valley Province unlawfully had carnal knowledge of GT, a girl under the age of fourteen years.”**

As far as the Alternative Charge is concerned, the facts of the prosecution case as stated in the Charge Sheet are as follows:

**“On the 21st February, 2003 at [particulars withheld], Kajiado District of the Rift valley Province, unlawfully and indecently assaulted GT, a girl under the age of 8 years by touching her private parts.”**

After a full trial, the Appellant was found **“guilty”** and convicted accordingly. Consequently, the Appellant was sentenced to serve 14 years imprisonment with hard labour. The learned Magistrate viz, **Ms L. Mutai** also ordered that he should receive 5 strokes of the cane. During the hearing of the appeal, the Appellant complained that he never committed the offence. Besides the above, the Appellant also complained that the sentence was lengthy and that the Court never took account of the mitigating factors. He pleaded with the Court to reduce the sentence saying that he had been framed by the father of the complainant who wanted to take money from their business.

Apart from the above, the Appellant also stated that the complainant's father had actually taken his cash – Kshs.70,330 before he was arrested. He also took issue with the fact that he had not been examined and that the Court had used Kiswahili language that he does **not** understand.

On the other hand, the State through Mr. Koech, Senior State Counsel has opposed the appeal on the ground that the conviction is sound and the sentence lawful. Apart from the above, the Senior State

Counsel submitted that the record indicates that there was a Maasai Interpreter. In addition to the above, Mr. Koech also submitted that the complainant was defiled in broad daylight for about ½ hour and was able to see the Appellant well. Later she was able to describe him.

On hearing the screams, the PW3 rushed to the scene where he saw the complainant being dragged into the forest and in turn informed the PW5 who rushed to the scene and found the complainant crying. While the complainant was rushed to the hospital, members of the public mounted a search and they arrested the Appellant within the vicinity. Thereafter, the Appellant led the PW5 and members of the public to the scene where he had defiled the complainant.

At the scene, a torn pant was recovered and the same was tendered as an exhibit. On being examined by the PW2, it was confirmed that the complainant had been defiled. Apart from confirming the presence of spermatazoa within the vagina, the PW2 also noted injuries on the face and neck that had been inflicted by the Appellant who had wanted the complainant to surrender. On coming out of hospital, the complainant easily identified the Appellant. In conclusion, Mr. Koech submitted that the sentence was not unlawful nor excessive given the seriousness of the offence.

The Court has carefully perused the above together with the record of appeal. Being the first Appellate Court, I am obliged to evaluate the evidence afresh and reach my own independent conclusion. Though the PW1 – G.T. was only aged 8 years, she explained explicitly and lucidly that the incident took at 7.30 a.m. which was broad daylight. Apart from explaining in details what happened at the scene she also explained that she had seen the Appellant's ears and facial features clearly. She was also able to identify the clothes that the Appellant was wearing. In his evidence, the PW4 – **James Langas** who is the Headmaster of **Ewaso Primary School** deposed that the complainant had explained to him that she had been defiled by a man who had green trousers, jacket and folded ears. After the PW5 – **Alelane Rulei** got the description from the PW4 they searched for the Appellant and found him in the forest. On arresting the Appellant, he begged for leniency before he led them to the scene of the incident where they recovered a torn pant – **Ex.1** and also saw blood at the scene. Later, the complainant identified the Appellant.

In his defence, the Appellant narrated how he was arrested at a butchery where he had gone to buy meat. Afterwards, the Appellant was identified by the complainant before he was charged for the present offence. The Appellant complained that his cash Kshs.70,330 was taken away.

A review of the medical evidence by the PW2 clearly show that the minor aged 8 years old had been defiled. The evidence of the minor was very clear about how the incident took place and who perpetrated the heinous act. She never had any doubts about the above and the circumstances were obviously favourable for a clear and precise identification. The Appellant was later arrested on the same day and was found to be wearing the same clothes. The Appellant himself later led the PW5 and members of the public to the scene where a torn pant was recovered. Apart from the above, the Court has carefully perused the judgment of the learned Magistrate. I am satisfied beyond any doubt that the learned Magistrate had analyzed the evidence carefully and reached the proper decision. Apparently, the allegations of being framed was an afterthought by the Appellant. The same were not raised during the defence of the Appellant. Since the conviction is safe and well-merited, I hereby uphold the same. I also confirm the sentence of 14 years imprisonment with hard labour as the same is valid and lawful. By 12th March, 2003, corporal punishment was legal. In view of the above, I hereby order that the Appellant be subjected to the same.

The upshot is that the appeal is hereby dismissed since the same has no merits at all.

**MUGA APONDI**

**JUDGE**

Judgment read, signed and delivered in open Court in the presence of the Appellant and

Mr. Njogu, State Counsel.

**MUGA APONDI**

**JUDGE**

**28th SEPTEMBER, 2005**