

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 47 OF 2003.

**ELKANA WANYONYI ::::::::::::::::::::::::::::::: APPELLANT.
VERSUS
REPUBLIC ::::::::::::::::::::::::::::::: RESPONDENT.**

J U D G M E N T.

The appellant was charged and convicted of the offence of defilement of a girl contrary to section 145 (1) of the Penal Code. The particulars of the charge were that on 6th May, 2003 at [particulars withheld] Trans Nzoia District he unlawfully had carnal knowledge of J.N a girl under the age of 14 years. He pleaded guilty to the charge and was convicted and sentenced to 12 years imprisonment and hard labour.

He has appealed against the sentence on the grounds that he is a first offender; and that he is a young man who is schooling. He has asked for mercy as the sentence is too harsh for him to bear.

Learned State Counsel Ms. Oundo has supported both conviction and sentence. She submitted that the plea was unequivocal and the sentence of 12 years imprisonment was justified as the complainant who was a young girl will be traumatized for the rest of her life.

Having reviewed the record of the proceedings, I find that the plea was unequivocal. So the appellant was properly convicted of the offence of defilement on his own plea of guilty to the charge. The maximum sentence provided by law for the offence is life imprisonment together with hard labour. Though the appellant is a first offender the victim is a girl of only 10 years, and will be traumatised by this event. I therefore consider that the magistrate exercised her discretion judicially in sentencing the appellant to 12 years imprisonment. I find no compelling reason to interfere with that discretion.

I therefore dismiss the appeal and uphold both conviction and sentence.

Delivered and dated at Kitale this day of 2004.

GEORGE DULU.

JUDGE.

Read in the presence of:-