



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 385 OF 2003**

**(From Original Conviction and Sentence in Criminal Case No.1178 of 2003 of the Senior Resident Magistrate's Court at Kwale –L.N. Mbatia, Ms. –S.R.M.)**

**KAZUNGU CHOME NGALA.....APPELLANT**

**=V E R S U S=**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

There was a mistrial in this case. The State concedes the appeal. However, the State Counsel has applied for re-trial on the grounds that the offence is very serious being defilement of a young girl of 12 years. The evidence against the Appellant is overwhelming. Also that these offences of sexual nature are now treated as very serious. The Appellant was sentenced to serve 9 years only in December, 2003. He cannot be said to have served substantial part of the sentence. Sexual matters can affect a person victim or the perpetrator to infection of HIV/AIDS and this court cannot treat the matter lightly to release the Appellant now would be to let him off lightly.

In the circumstances I order for re-trial. The present appeal is allowed. However, the Appellant shall remain in custody until mention before Chief Magistrate Mombasa on 1/4/2004 for directions.

The trial shall be at Mombasa before a difference court.

**Dated at Mombasa this 30th day of March, 2004.**  
**JOYCE KHAMINWA**

**JUDGE**