



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**H.C.CR. APPEAL NO.33 OF 2004**

(Being an appeal from Original Criminal Conviction and sentence in Criminal Case  
No.193 of 2004 of the Senior Resident Magistrate's Court at Kwale –L.N. Mbatia, SRM)

**NICODEMUS KILONZO NDAMBUKI.....**  
**APPELLANT**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

**Coram: Before Hon. Justice Mwera**  
**Monda for the State**  
**Accused person in person –present**  
**Court clerk –Sango**

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

The appellant was charged under S.145 (1) Penal Code in that on 18- 1-2004 at Bando Village, Kwale he had carnal knowledge of Mupa Malau a girl under the age of 16 years.

On being charged he pleaded guilty and after a plea that is apparently unequivocal, a sentence of 20 years imprisonment with hard labour was handed down. He appealed against the sentence.

At the hearing of the appeal, the appellant urged the court to reduce that sentence on the basis that it was harsh and excessive and he was a first offender. He added here that he had children to fend for. The learned State Counsel noted that the conviction was proper and the sentence not harsh or excessive. That the maximum prison term for this kind of offence was life imprisonment.

Having heard all the above this court is minded to say that interests of justice will still be served even as the lower court sentence is set aside and substituted with one of twelve (12) years imprisonment. The rest of the sentence remains. Save for reducing the prison term as shown above this appeal is dismissed.

Judgement accordingly.

**Delivered on 31st May 2004.**

**J.W. MWERA**

**JUDGE**