

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 82 OF 2003

SIMON MWANGI NDUNGU.....APPELLANT
Versus
REPUBLIC.....RESPONDENT

Appeal against judgment by M. Maundu, Resident Magistrate, in the Resident Magistrate's Court at Wanguru, Criminal Case No. 656 of 2002)

JUDGMENT

This is an appeal against the sentence of 10 years imprisonment with hard labour plus 12 strokes of the cane.

The learned State Counsel opposes the appeal although ready that the strokes may be removed.

I have carefully considered what has been brought before me during the hearing of the appeal and as the learned State Counsel rightly points out, the offence the Appellant committed was of a very serious magnitude as he defiled a small girl of four years only.

In the circumstances and in light of the prevailing atmosphere, the Appellant could have received even a much more serious sentence than what was meted out to him.

He was sentenced before the law was amended increasing the sentence to life imprisonment and what I can let him benefit from to-day is only the removal of the 12 strokes corporal punishment. Accordingly, I do hereby allow the Appellant's appeal only to the extent of setting aside corporal punishment.

Otherwise the sentence of 10 years imprisonment with hard labour remains undisturbed and to that extent the appeal of the Appellant is dismissed.

Dated this 2nd day of December 2004.

J. M. KHAMONI

JUDGE