



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE
HIGH COURT CRIMINAL APPEAL NO. 786 OF 2001

**From original Conviction and sentence in Criminal Case No. 723 of 2001 of
the Chief magistrate's Court at Thika**

MUNGAI KARANJA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with the offence of defilement of a girl c/s 145(1) of The penal code. In the alternative, he faced the offence of indecent assault on a female c/s 144(1) of the Penal Code.

After a full trial, he was convicted of the alternative charge and sentenced to five years imprisonment, ten strokes of the cane and hard labour. This is an appeal arising from that conviction and sentence.

The evidence was brief. The complainant was then aged nine years, she had been sent by her mother to the shops to buy sugar but on the way the appellant called her to help him carry some water from a well. She complied. After walking for some time, the appellant is said to have diverted into a maize plantation with the complainant where he defiled her. The complainant described in detail what transpired and on being released went to the shop bought the sugar and later told her mother of the incident. The complainant was later examined by a clinical officer who confirmed the defilement. The appellant was arrested and charged.

In his defence the appellant denied the offence and described his movements for that day.

The learned trial magistrate was satisfied that defilement had taken place but reduced the charge because the appellant had not been examined medically. With respect, that was a misdirection. Whether or not the appellant was examined should not have had any bearing on the case of this nature. It was enough that the prosecution had proved that the complainant had been defiled, the medical evidence on the complainant supported that and only the appellant could be held responsible for that.

The learned trial believed the prosecution case. She observed that the young girl was very confident and remained unshaken. She had the benefit to see and observe the witness and I have no doubt that she was

right.

That evidence of the complainant and that of the clinical officer was sufficient to sustain a conviction for the main charge. I hereby therefore set aside the conviction for the alternative charge and enter a conviction on the offence of defilement c/s 145 (1)of The Penal code.

This court gave the appellant notice that sentence may be enhanced. The offence is serious. The appellant took advantage of the innocence of a young girl aged only nine years old. A deterrent sentence is called for. The sentence of five years is hereby enhanced to ten(10) years. The 10 strokes of the cane shall remain the same and so shall be the order for hard labour.

Right of appeal explained.

Orders accordingly.

Dated and delivered at Nairobi this 8th day of April, 2003

MBOGHOLI MSAGHA

JUDGE