

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 430 OF 2001

(Being an appeal against Sentence in criminal Case No. 2876 of 2001 by the Resident Magistrate's Court at Mombasa –K. Muneeni)

NYUNDO BAYA APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G E M E N T

The appeal herein is on Sentence on the ground that it was harsh and the appellant is now remorseful. He was charged and Convicted for the offence of Defilement of a Girl under Fourteen years Contrary to Section 145(1) of the Penal Code on his own Plea of Guilty. He was Sentenced to serve 7 years imprisonment with 6 strokes of the cane and hard labour. The State Counsel supported the Conviction and Sentence terming the act as a Beastly one. The complainant aged 12 years had gone to appellant's house to help her sister who worked for appellant baby appellant's child while her sister went to see the appellant's wife at her place of business. The appellant then called complainant into the house, fell her on the sacks he had laid on the floor, ganged her mouth with a lesso and proceeded to Defile her. After the Incident the appellant fled and the complainant who was bleeding informed her sister who had by then returned. Complainant was admitted to Coast General Hospital as she was bleeding profusely and matter reported to the Police.

The maximum Sentence provided by law 14 years imprisonment with hard labour together with corporal punishment. In this case he got a Sentence of 7 years imprisonment with hard labour and 6 strokes. This I agree with the State Counsel is not excessive taking into account the nature of the offence. The appellant has a wife and child and the very person entrusted to take care of his own child, he turned against. The victim is a child and this shows the appellant is a person who does not think much of a child like the victim. The trauma she suffered may be with her the rest of her life. In the circumstances the appeal is dismissed.

Dated and Delivered at Mombasa this 18th day of July, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE

