



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO.332 OF 2001**

(Being an appeal from Original Conviction and Sentence in Criminal Case  
No.2415 of 2001 of the Chief Magistrate Court at Mombasa –A.W. Gungi,  
RM

FREDRICK KATANA HARIMBA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

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

In this appeal the appellant complains of conviction and sentence imposed on him for the offence of defilement of a girl aged 7 years.

The facts are that on 18/7/2001 he was found lying on top of the complainant inside a motor vehicle at about 10.00 p.m. He said he was a neighbour at [particulars withheld] where the complainant resided with her father and mother. The complainant herself said she knew him but he had never touched her before this incident.

It was PW.3 who found him. PW.3 went to call the mother of the complainant. By the time PW.3 and PW.2 mother returned to the vehicle they found the appellant had gone leaving the child alone in the car. The PW.2 said she picked up the child and her panty from the vehicle. She picked it and they went to their shop. Later they went to look for the appellant who they knew and eventually they got him and confronted him and eventually took him to police station where the matter was reported. The police officer PW.5 gave out the P3 form which was taken with the child to hospital. The child was examined. The doctor who gave evidence said he examined her and found that she had an inflamed external private part and she had lost her hymen and she had dirty discharge from her private parts. He concluded that she was defiled. This evidence corroborates that of the other witnesses.

On the identification the witness PW.3 R.M said that he saw Fredrick in the vehicle lying on top of the child. He had been requested by his boss – PW.2 to fetch her. He knew accused both by name and appearance. He also lived and worked at [particulars withheld]. I believe his evidence. I also believe the child when she said that Fredrick naming the appellant whom she knew, had ordered her to remove her pants and that she was hurt by the experience.

Taking into consideration of all the evidence and the story of the appellant in his defence I find that the defence of the appellant not credible. He admits having been in contact with this family the same night. The story that the complainant family were making trouble for him because of Sh.500/- is unbelievable and inconsistent with behavior of prosecution witness. Which parent would fabricate such a story at the expense of a five year old girl. I do not find any merit in this appeal.

On the issue of sentence I find no reason to interfere. The trial Magistrate did correctly remark that the offence is serious. I also find it extremely serious to defile a child of 5 years. She is helpless and does not understand what the appellant was doing to her. I am of the view that the sentence imposed by trial magistrate is proper and I decline to interfere. The Appeal is dismissed.

**Dated at Mombasa this 22nd Day of July, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

Read in the presence of: Appellant and Ms. Kwena in open court.

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**