



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 412 OF 2001**

(From Original Conviction and Sentence in Criminal Case No. 937 of 2001  
of the Resident Magistrate's Court at Voi – E. N. Maina – S.R.M.)

ALFRED NGWATU MWADIME ..... APPELLANT

- VERSUS -

REPUBLIC ..... RESPONDENT

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

The appellant was charged and convicted on two counts. On Count 1 he faced a charge of Abduction of a girl under 16 years and sentenced to 2 years imprisonment and on Count II Defilement of an imbecile and sentenced to serve 7 years imprisonment. He has now preferred an appeal against sentence.

The Appellant entered a plea of guilty on both counts and the facts therein. He had on the 5.10.01 at around 6.30 p.m. met the complainant whom he knew since she was a small girl to be mentally retarded at the market place and asked her to accompany him to his house where he prepared and served her with food and later put her to sleep on his bed. He left and returned later and defiled her the whole night. The next day he locked her up in his house until 6.00 p.m. when he again cooked and served her with food and then proceeded to defile her the whole night. He let her go the day after neighbours became suspicious and she reported to her mother who in turn reported to the police at Wundanyi and took the girl to hospital. She was issued with a PW3 Form which confirmed she had been defiled. When the facts were read to him he answered:

“I understand the facts properly. I have known the girl since she was a child. She is not like other children of her age because she is mentally retarded. I saw her as she was loitering towards the market. I called her by her name. I went to my home with her, prepared dinner and we ate. I then slept with her”

In his appeal the appellant stated that in his understanding he had infact extended a favour to the complainant by giving her a place to sleep and food. He had no regrets for what he had done. He infact said it was not the first time he had done so.

From the proceedings and what he said in appeal, I am inclined to agree with the state Counsel that the Appeal does not exhibit the slightest decree of remorsefulness. He knew the complainant was mentally impaired and on his own admission had been taking advantage of her severally. He is not the kind of person to deserve leniency from the Court for he is a danger to children. The sentence passed is within the limits set by law and the appellant having failed to convince the Court that there exists any special circumstances for consideration, the appeal is dismissed.

Dated and delivered at Mombasa this 26th September, 2002.

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**