

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

HIGH COURT CRIMINAL CASE NO 1227 OF 2001

**FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE NO. 1107 OF 2001 OF THE SENIOR PRINCIPAL
MAGISTRATE'S COURT AT KIBERA CC. MWANGI**

MOHAMED HUSSEIN HAJI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offence of defilement of a girl under the age of fourteen years, and sentenced to serve sentence of four years. He has appealed against both the said conviction and sentence. The evidence adduced was that the appellant took the complainant to his house locked her in there and sodomised her. The complainant who was a school girl did not end up at her home that night because she was held by the appellant overnight.

On the following day, the mother of the complainant who had looked for her in vain encountered the appellant and the complainant but the appellant turned and took off. The complainant told her mother what had transpired and was taken to the doctor for medical examination.

The appellant was arrested after about one week because he had left his home. He was subsequently charged. The doctor who examined the complainant found evidence of sodomy and produced the p3 form in respect of her.

In his defence the appellant denied the offence and blamed his predicament on differences with his brother.

I have evaluated the evidence. The complainant was specific on what transpired and the culprit involved. She told her mother of the same. The doctor confirmed the allegation. The defence could not with stand the weight of the prosecution case. The charge, in my judgment, was proved beyond reasonable doubt. Conviction was well founded. The sentence was not excessive, if anything it was lenient.

Accordingly, this appeal is hereby dismissed. Orders accordingly.

Dated and delivered at Nairobi this 18th day of December, 2002.

MBOGHOLI MSAGHA

JUDGE