

CHOMBO NZOLE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant is charged with the offence of Defilement of a girl contrary to section 145(1) Penal Code. The particulars show that the Appellant had carnal knowledge of T.A a girl under the age of 14 years. In fact she was 4 years old. The Appellant pleaded guilty and said he was sorry it happened. The medical examination evidence in P3 form shows that Hymen was left intact. There was no penetration.

The appellant was sentenced to 14 years imprisonment with 2 strokes of the cane. It is against this sentence that he has appealed. The maximum sentence for this offence is imprisonment for fourteen years together with corporal punishment and hard labour. It shows that the Trial Magistrate gave maximum punishment and did not seriously consider the mitigation. The Appellant was remorseful, he was a young man and was first offender. However the offence is serious affecting as it does a small helpless child. The Appellant states now that his health is not good and has obtained orders from this court for medical examination. The doctors report show that the appellant has had epilepsy and is otherwise mentally fit. In the circumstances and upon considering all matters I am of the view that this is a case that requires reconsideration of sentence. The Trial Magistrate applied maximum sentence and it cannot be said she exercised her judicial discretion fairly. The appellant was a first offence and should have been treated with leniency to encourage him to reform. The sentence is excessive and harsh and I do set it aside and substitute same with imprisonment for a term of 4 years and 2 strokes of the cane.

Dated at Mombasa this 13th Day of September, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE