

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.126 OF 2000

(From Original Conviction and Sentence in Criminal Case No.2019 of 1999 of the Chief Magistrate's Court at Mombasa –B. Maloba, Ms. –S.R.M.)

**MWANIA NGUVUTA MATHEKA.....APPELLANT
V E R S U S
REPUBLIC.....RESPONDENT**

J U D G M E N T

The appellant was convicted of defilement of a girl under the age of fourteen years contrary to Section 145(1) of the Penal Code and was sentenced to 14 years imprisonment plus 8 strokes of the cane. He has appealed against both that conviction and sentence. The evidence against the appellant was overwhelming. He was seen by PW.3 taking the complainant to his house and when PW.3 asked him he said he wanted to send her. The complainant gave evidence on oath. She told the court of how the appellant pushed her into his house, removed her pants and defiled her. She felt pain and screamed. Her mother came kicked open the door of the appellant and rescued her.

There is a medical report by PW.6 who examined her and found that he had a tear of her private parts and who confirmed that she had been defiled. The appellant's defence that the mother of the complainant had framed the charges against him because of a grudge was rejected by the Trial Magistrate and rightly so. The conviction was therefore proper and the appeal against conviction is therefore dismissed. On sentence, the appellant was awarded the maximum as provided by law. At this age of AIDS such offenders must adequately be punished. However, taking into account that the appellant is a first offender, the appeal against sentence is allowed.

The sentence of 14 years imprisonment with 8 strokes of the cane is set aside and substituted with a sentence of 10 years imprisonment with 5 strokes of the cane. To that extent this appeal succeeds. Otherwise the appeal is dismissed.

Dated and delivered at Mombasa this 8th day of October, 2001.

**J.L.A. OSIEMO
J U D G E**

