



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CORAM: MAJANJA J.**

**CRIMINAL APPEAL NO. 71 OF 2018**

**J M O.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence of Hon. C.R.T Ateya – RM dated 10<sup>th</sup> January 2018 at the Senior Resident Magistrate’s Court at Ogembo in Sexual Offences Case No. 9 of 2017)*

**JUDGMENT**

1. This is a case where the appellant was charged with the offence of incest contrary to **section 20(1)** of the Sexual Offences Act, convicted and sentenced to 20 years imprisonment. It was alleged that on 27<sup>th</sup> January 2017 at Misesi Sub-location, Gucha Sub-County within Kisii County, he intentionally caused his penis to penetrate the vagina of DN, a female aged 17 years who was to his knowledge his daughter.
2. Having perused the proceedings, I am satisfied that the appellant was not given an opportunity to present his defence on account of illness.
3. I therefore allow the appeal but shall order a retrial at the Ogembo Magistrate’s Court. The appellant shall remain in custody pending trial until the complainant testifies. He shall be taken for retrial on **15<sup>th</sup> March 2019**.

**Dated and delivered at Kisii this 7<sup>th</sup> day of March 2019.**

**D.S MAJANJA**

**JUDGE**

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.