



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL CASE NO. 170 OF 2015

[Being an appeal from the conviction and sentence in Kimilili PM Criminal case no. 52 of 2015 by D. Onyango (SPM)]

E M W APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1. **E M W** (the appellant) was convicted on a charge of defilement contrary to Section 8 (1) (3) of the Sexual Offences Act and sentenced to serve 20 years imprisonment. The charge against him stated that between 25th August, 2015 and 31st August 2015, at [Particulars withheld] Kimilili, Bungoma County, he intentionally and unlawfully caused his penis to penetrate the vagina of **BNN (Initials used to protect identity of the victim)** a child aged 14 years.

2. The appellant admitted the charge which was read to him in Swahili which was that **BNN** who was aged 15 years and a class 7 pupil left for school on 25.8.15. However between that date and 31.08.15, she was consorting with the appellant and was eventually found inside his house.

3. They were apprehended and escorted to hospital where it was confirmed that **BNN** had been defiled. The trial court's record reads:-

“Birth certificate indicating the accused was 14 years”

-it was produced as Ex.2.

The appellant stated:-

“It is true the complainant had sex with me in my house.”

4. A plea of guilty was entered and in mitigation the appellant told the court he was an orphan as his mother had died and his father had mental health problems. Since he was not a first offender the court directed that he undergoes a 2nd age assessment. The first report from Kimilili District Hospital dated 02.09.2015 indicated he was approximately age 16 – 18 years. The 2nd report dated 15th September 2015 carried out at Bungoma District Hospital indicated his age as 20 years and it was on account of this that he was sentenced to served 20 years imprisonment.

5. His appeal was on grounds that police deceived him to plead guilty to the charge and he was not

warned of the consequences of pleading guilty. He also stated that he was not conversant with the language of the court. He lamented that the sentence was harsh and excessive.

The appellant filed written submissions which basically repeated his grounds of appeal.

6. In opposing the appeal **MR. AKELLO** submitted that the appellant admitted the offence and the issue of being misled by police was never raised before the trial court, so the trial court had no way of detecting such deceit.

7. The appellant claimed the deceit was initiated by police who arrested him- however he does not even explain why he was being told to admit the charge. What promise had been made to him?

My finding is that the plea was unequivocal and though he claims to have had challenges with the language used in court, I take note that the trial court record shows the charge was read to him in Swahili, and the interpretation is shown as English/Swahili- which is the same language he used at the appeal so that limb does not hold.

Certainly I feel extremely sorry for the appellant whose situation is typical of young men with raging hormones who fall victim to teenage/young adult romance and indulge in matters of the flesh. Unfortunately the Sexual Offences Act is blind to this reality and it is with an extremely heavy heart that I confirm the sentence and dismiss the appeal as having no merit.

DELIVERED and DATED this 15th day of June, 2017 at BUNGOMA.

H.A OMONDI

JUDGE.