



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CRIMINAL APPEAL NO. 11 OF 2015**

**STEPHEN KIRAITHE M'AMUIRI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No.713 of 2012 of the Senior Principal Magistrate's Court at Tigania by Hon. J.W Gichimu – Ag. Principal Magistrate)*

**JUDGMENT**

The appellant, **STEPHEN KIRAITHE M'AMUIRI** , was Charged with an Offence of defilement contrary to section 8(2) of the Sexual Offences Act No.3 of 2006. The particulars of the offence were that on 11<sup>th</sup> May 2012 at [*particulars withheld*] village, Tigania East District of **Meru** County, the appellant intentionally caused his penis to penetrate into the vagina of **B.N**, a child aged 5 years. After the trial the appellant was found guilty of the offence of attempted defilement contrary to section 9 (2) of the Sexual Offences Act and sentenced to serve 10 years imprisonment. He now appeals against both conviction and sentence.

The appellant was in person and raised the following grounds of appeal:

1. That when he was charged with new charges he was not called upon to plead.
2. That the learned trial magistrate relied on misplaced facts to convict him.

The state opposed the appeal through Mr. Musyoka, the learned counsel.

Briefly the facts of this case were that when the complainant went to visit her grandmother, she did not find her. She however found the appellant who was employed as a farm hand. After she had taken some gruel, the appellant took her into a house and defiled her.

The appellant contended that he was falsely accused for the complainant's mother owed him some money and that the complainant had stolen his radio.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated Case of **OKENO VRS. REPUBLIC 1972 EA 32**.

The contention by the appellant that the new charge was not read to him is not true. The record indicates

that on 30<sup>th</sup> July 2012 the prosecutor applied to substitute the charge. The application was allowed and the appellant was called upon to plead and which he did in Kimeru. This ground of appeal has no basis.

The allegation by the appellant that he was accused falsely for the complainant's mother owed him money cannot be true. When the complainant's mother initially testified, he claimed that he was owed Kshs. 3000 by her husband. When she was recalled later, he changed and alleged that she was the one who owed the money.

My evaluation of the entire evidence on record does not disclose any misplaced evidence as contended by the appellant. There was overwhelming evidence against him. His appeal is dismissed.

The sentence meted out cannot be disturbed for he was sentenced to the minimum provided by the law.

The appellant shall serve the sentence meted out by the learned trial magistrate.

**DATED at Meru this 10<sup>th</sup> day of May 2016**

**KIARIE WAWERU KIARIE**

**JUDGE**