



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 23 OF 2015**

**SAID SAFARI ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

This Notice of Motion application dated the 2nd day of March, 2015 and brought under section 357 of the Criminal Procedure Code seeks an order to release the appellant on bond pending the hearing and determination of this appeal.

The appellant was Convicted and Sentenced to ten (10) years imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act No. 3 of 2006.

The particulars of the offence being that:-

***“On the 31st day of August, 2014 at [Particulars withheld] Village Kwale County he caused his penis to penetrate the vagina of M J a girl aged seventeen (17) years”.***

The Appellant pleaded guilty to the charge.

The facts that were read to him were as follows,

***“The Complainant M J developed a love affair with the Accused in 2013 while in class five and seven respectively. They continued with their relationship and on 31st February, 2014 they took they both agreed to have sexual intercourse which resulted in conception. The matter was reported to police on 28th January, 2014 and the Accused was charged accordingly. I wish to produce the age assessment reports as each No. 1 and No. 2 respectively .....”.***

The age assessment report for the Complainant shows that at the time of examination she was aged seventeen (17) years old. I have not been able to see that of the appellant.

It is the contention by Counsel for the appellant Mr. Magolo that the appellants age was assessed at around eighteen (18) years further if the offence occurred on 31st February, 2014 then the appellant was aged seventeen (17) years.

Section 8(7) of the Sexual offences Act provides,

***“Where the person charged with an offence under this act is below the age of eighteen (18) years, the Court may upon Conviction, Sentence the Accused person in accordance with the provisions of the Borstal institutions Act and the children's Act”.***

I find that the appeal has high chances of success and the application for bond is granted. The appellants may be released on a bond of Ksh. 100,000/= with one surety of similar amount.

Ruling delivered dated and signed in open Court this **12th** day of **May, 2015**.

**M. MUYA**

**JUDGE**

**12TH MAY, 2015.**

**In the presence of:-**

Learned Counsel for the prosecution Mr. Masila

Learned Counsel for the appellant Mr. Odhiambo holding brief Magolo

Court Assistant Musundi

**M. MUYA**

**JUDGE**

**Court:**

Hearing of the main appeal on 13th July, 2015

**M. MUYA**

**JUDGE**

**12TH MAY, 2015**