



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL REVISION NO. 17 OF 2013

REPUBLIC

VERSUS

BENSON MBATHA APPLICANT

RULING ON REVISION

1. By an application dated 22/7/2013 the Applicant, **Benson Mbatha**, moved this court for an order of revision under **section 362 and 364** of the **Criminal Procedure Code**.
2. The Appellant, **Benson Mbatha** was charged with the offence of **defilement contrary to section 8 (1)** of the **Sexual Offences Act No. 3 of 2006**.

The particulars of the offence were that on the 18th day of August 2012 at **[particulars withheld] market** in **Masinga District** within **Machakos County**, intentionally caused his penis to penetrate the vagina of **N M** a child aged 8½ years.

3. In the alternative, the Appellant was charged with the offence of committing an **indecent act** with a child contrary to **section 11 (1)** of the **Sexual Offences Act No. 3 of 2006**.

The particulars of the offence were that on the 18th day of August 2012 at **[particulars withheld] market** in **Masinga District** within **Machakos County**, intentionally touched the vagina of **N M** a child aged 8½ years with his penis.

4. When the Applicant was arraigned in court, he pleaded not guilty. After a full trial, the Applicant was acquitted in the main count under **section 215** of the **Penal Code** and convicted and sentenced to serve ten (10) years imprisonment in the alternative count.
5. Under **Section 362** of the **Criminal Procedure Code**:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

6. I have considered the lower court record and the provisions of the law under which the Applicant was charged. I am satisfied that the proceedings are regular and the sentence imposed is within the law. Consequently, I dismiss the application for revision.

.....

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 17th day of March 2014.

.....

B. THURANIRA JADEN

JUDGE