



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 182 of 2009

**BERNARD KITHINJI.....APPELLANT**

**V E R S U S**

**REPUBLIC .....RESPONDENT**

**J U D G M E N T**

The Appellant Bernard Kithinji is charged with Defilement of a child of 5 years contrary to section 8(1) and 2 of the Sexual Offences Act. He was found guilty, convicted and sentenced to 20 years imprisonment.

Being aggrieved by the conviction and sentence the Appellant filed a memorandum of Appeal in which he raises the following grounds:

- 1. I pleaded guilty/not guilty at trial.**
- 2. Grounds of appeals on the attached separate sheet of paper.**
- 3. I forwarded herewith the Ksh Nil in respect of appeal fee.**
- 4. I am a poor man and have no money for appeal fee.**
- 5. I do wish to be present during the hearing of the appeal.**

When the appeal came up for hearing, the Appellant abandoned his appeal against the conviction and urged his appeal only against sentence.

In his submission before court the Appellant urged that he was challenging the sentence of 20 years imprisonment imposed against him. He urged the court to reduce the sentence.

The state was represented by Mr. Moses Mungai, learned state counsel. The state opposed this appeal on grounds the minimum sentence for the offence of the Appellant faced was 20 years imprisonment. He urged the court not to disturb the sentence.

I have considered this appeal. The Appellant was sentenced to 20 years imprisonment. I have perused the record of the lower court proceedings. It is evident from that record that there were aggravating factors involved in this case. First of all the child was very young being only 5 years old. Secondly the doctor confirmed two things. Not only were her private parts torn, she had also been infected with a venereal infection.

The section under which the Appellant was convicted provides that a person convicted there under “**shall be imprisoned for life**”. The Appellant was fortunate to have been sentenced to a term of 20 years. Had the state cross-petitioned, it was a good case to enhance the sentence.

Having come to the conclusion I have I find no merit in this appeal and accordingly dismiss it.

**SIGNED AND DELIVERED AT MERU THIS 2<sup>ND</sup> DAY OF MAY 2013.**

**J. LESIT**  
**JUDGE**