



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL APPEAL NO 331 OF 1986**

**MULI .....APPELLANT**

**VERSUS**

**REPUBLIC.....DEFENDANT**

**JUDGMENT**

March 20, 1987 Abdullah J delivered the following Judgement.

The appellant was convicted by the learned sentence senior resident magistrate of incest by males of contrary to section 166(1) of the penal code and sentenced to imprisonment of 3 years.

The evidence for the prosecution was that the complainant, a girl of about 13 years and daughter of the appellant was sexually assaulted by her father during the night of February 8, 1986. The girl had alleged that she had been so assaulted on 4 occasions before and that the appellant had been warned.

The mother of the complainant saw the appellant chase the girl in the early morning of February 8, and later she heard the appellant ask the complainant, "Did you tell the mother". The mother who had been aware of the past misdeeds questioned the complainant but she did not come forth. However, that morning when washing the clothes the mother noticed bloodstains on the dress of the complainant and she questioned the complainant who confessed.

Upon report to the Chief, the appellant was arrested.

He made a cautionary statement in which he admitted having sexual intercourse with his daughter but said that he was drunk.

The medical examination revealed that the complainant had pus in her vagina and that there was evidence of past sexual intercourse as hymen was ruptured.

The appellant elected to remain quiet.

In his memorandum of appeal the appellant claims that all this arose because of quarrels with his wife about disappearance of some cattle at home. It may be observed that record clearly indicates that the appellant had not questions to ask of any of the witnesses.

It is evident that the allegations in the petition of appeal are an afterthought.

Although, it would have been imprudent to act on sole evidence of the complainant, there was the ample corroboration of the same. The appellant was properly convicted.

I do not consider the sentence unreasonable

The appeal is dismissed.

**March 20, 1987**

**ABDULLAH J**