

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 216 OF 1987

LOVE.....PLAINTIFF

VERSUS

REPUBLICDEFENDANT

JUDGMENT

October 19, 1987 Torgbor J delivered the following Judgment. The appellant was convicted for defilement and sentenced to 3½ years term of imprisonment. Mr Mulwa for the appellant has abandoned the grounds of appeal against conviction, wisely so, as the appellant pleaded guilty. The appeal is therefore against sentence in effect.

Having considered the circumstances of this case it is observed that the appellant gave the complainant Kshs 5 and further the appellant says in his ground of appeal that the complainant agreed. This allegation is not borne out by the proceedings as the appellant said nothing in mitigation.

In all the circumstances of this case however and bearing in mind the forceful appeal presented by Mr Mulwa I am persuaded that sentence was excessive and it is set aside and substituted by a term of imprisonment for 2½ years plus 10 strokes of the cane.

Order accordingly.

October 19, 1987

TORGBOR

JUDGE