



**IN THE COURT OF APPEAL**

**AT MOMBASA**

**( Coram: Madan, Law & Miller JJA )**

**CRIMINAL APPEAL NO. 24 OF 1981**

**BETWEEN**

**MUSYOKI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was convicted on his own plea of defilement of a girl under the age of fourteen years contrary to Section 145(1) of the Penal Code. His appeal to the High Court was dismissed. He has appealed again. We adopt the following passage from the judgment of Kneller J, in the High Court:

“The conviction was based on the appellant’s reply to the charge and its particulars and his admission of all the facts outlined by the prosecutor as being true and they covered the essential ingredients of this offence. The Republic alleged the girl was under fourteen years and in particular only eleven and the appellant said this was so and he knew it, so the production of a birth or medical certificate to support the allegation that she was under fourteen was unnecessary.”

Mr Gatonye for the appellant has produced to us a letter and an envelope written by the girl to the appellant before the commission of the offence. Both documents are amorous and they show the girl was friendly and she was encouraging the appellant. Although the envelope and letter were in the possession of the prosecutor they were not produced to the first court, as they should have been, nor also to the High Court upon the first appeal. If that had been done the appellant may well not have received the severe sentence of four years imprisonment with hard labour and fifteen strokes. There were mitigating circumstances known to the prosecution which they failed to bring to the notice of the two courts below who may be said unknowingly to have involved themselves in an error of principle when the appellant was sentenced. Accordingly we reduce his sentence to one year imprisonment with hard labour and five strokes.

Order accordingly.

**Dated and Delivered at Mombasa this 14th day of May 1981.**

**C.B.MADAN**

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**JUDGE OF APPEAL**

**E.J.E.LAW**

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**JUDGE OF APPEAL**

**C.H.E.MILLER**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the  
original.

**DEPUTY REGISTRAR**