



IN THE COURT OF APPEAL OF KENYA
AT NAKURU

Criminal Appeal 185 of 2006

BETWEEN

PAUL TANUI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Nakuru (Kimaru, J.) dated 22nd February,
2006
in

H.C.CR.A. NO. 144 OF 2004)

JUDGMENT OF THE COURT

The appellant was convicted by the Senior Resident Magistrate, Molo for the offence of defilement of a girl contrary to **Section 145 (1)** of the Penal Code and sentenced to 20 years imprisonment.

According to the evidence given at the trial, on 29th November, 2003 at 11.00 a.m. **J.C** who resides at K left her sister **M.C** (complainant) a standard three primary school pupil, then aged 10 years in her house and went to the market to buy food stuffs.

In her sister's absence, a man went to the house and told the complainant that her sister had asked her to fetch some books at B. The complainant agreed to accompany the man to B to get the books. After walking for a distance of about 200 metres, they reached a valley where they found the appellant and the complainant was handed over to the appellant. She had known the appellant for a long time as neighbour of her sister. But as the appellant was ostensibly leading the complainant to the house where the books were, he held her and took her to the forest where he defiled her. The appellant abandoned her in the forest after defiling her. The complainant walked through the bush not knowing the direction to her sister's home until she met an old man who took her to bus stage at K Town from where she found her way home and returned home arriving there at 6.00 p.m. She reported the incident to her sister who in turn reported to the police. The appellant was arrested thereafter and charged. The complainant was examined by a clinical officer on the same day who confirmed that she had been defiled, that she had bruises in her private parts and had been infected with a venereal disease.

The appellant has appealed to this Court after the superior court (Kimaru J) dismissed his appeal against both conviction and sentence.

Nonetheless at the hearing of the appeal the appellant intimated that he had indeed defiled the complainant and abandoned the appeal against conviction. He however asked us to reduce the sentence.

We have perused the memorandum of appeal. It is clear that the appellant has not appealed against the sentence in any of the five grounds of appeal.

Furthermore he did not state any ground warranting the reduction of the sentence.

The offence was committed on 29th November, 2003 after **Section 145** of the Penal Code was amended by *Act No. 5 of 2003* which commenced on 25th July, 2003 which amendment enhanced the sentence for defilement to life imprisonment with hard labour. The appellant was thus sentenced to 20 years imprisonment for a serious offence which then carried a maximum sentence of life imprisonment. Second appeals to this court are on points of law only and the severity of sentence is expressly a matter of fact (see **Section 361 (1) (a)** of the Criminal Procedure Code). It is clear that an appeal against the severity of the sentence as opposed to legality of sentence is not maintainable.

In the result, we dismiss the appeal in its entirety.

Dated and delivered at Nakuru this 28th day of May, 2010.

E. O. O’KUBASU

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JUDGE OF APPEAL

E. M. GITHINJI

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JUDGE OF APPEAL

J. G. NYAMU

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JUDGE OF APPEAL

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