



**Bett v Republic (Criminal Appeal E008 of 2023)  
[2024] KEHC 15018 (KLR) (26 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15018 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E008 OF 2023  
JR KARANJA, J  
NOVEMBER 26, 2024**

**BETWEEN**

**FESTUS KIPKEMOI BETT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant Festus Kipkemoi Bett, was convicted and sentenced to serve twenty (20) years imprisonment by the Senior Resident Magistrate at Kericho for the offence of defilement, contrary to section 8 (1) as read with section 8(3) of the Sexual Offence Act.
2. It was alleged that on the 19<sup>th</sup> December, 2020 at Chemosot-Buret Kericho county, the Appellant defiled SC, a child aged fourteen (14) years and in the alternative he committed an indecent act with the child contrary to Section 11 (1) of the Sexual Offence Act.
3. Upon his plea of not guilty, the Appellant was tried and convicted on the main count. He was then sentenced accordingly.

Being dissatisfied with the conviction and sentence, the Appellant preferred the present appeal on the basis of the grounds set out in the petition of appeal filed herein on 6<sup>th</sup> February, 2023 as amended at the hearing of the appeal which was by way of written submissions.

4. Whereas the Appellant appeared in person at the hearing, the Respondent state appeared through the learned prosecution counsel Mr. Karanja. The state opposed the appeal which was given due consideration by this court on the basis of the supporting grounds and the rival submissions thereby placing a duty upon the court to reconsider the evidence and draw its way conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.



5. In that regard, the evidence led against the Appellant through the seven (7) prosecution witnesses inclusive of the child victim (PW1) was considered against the Appellant's, defence which was essentially a denial and an indication that he was not at the scene of the offence on the material date and time as he had gone to his grandmother's home.
6. Basically, what emerged as the main issue for determination was whether the child victim was indeed defiled and if so, whether the Appellant was positively identified as the offender. The necessary ingredients of a charge of defilement include the fact of penetration, the age of the victim and the positive identification of the offender.
7. In this case, the adduced by the child victim (PW1) as corroborated evidence mainly by that of the clinical officer (PW5) and on the periphery by that of the victim's siblings (PW2) and PW3) did establish and prove beyond reasonable doubt that there was penetration of the victim's, genital organ by a male genital organ.
8. The evidence by the victim's matter (PW4) indicated that the victim was at the material time live aged fourteen (14) years. This was established by the production of the birth certificate (P exhibit 1) through the investigating officer (PW7). The certificate showed that the child victim was born on 18<sup>th</sup> December, 2006 thereby placing her at the age of fourteen (14) at the material time.
9. The elements of penetration and age having been duly established and proved by the prosecution, the offence of defilement was thus proved. In any event, this was an undisputed fact which therefore rendered the element of identification as being the bone of contention in this matter and for which the appellant raised an alibi.
10. The obligation to disapprove the alibi lay with the prosecution and this was attained through the child victim and her siblings who clearly and credibly placed the Appellant at the scene of crime at the material time and positively identified him as the offender in circumstances which were favourable for such identification.
11. Not only did the offence occur in broad daylight, the identifying witnesses were familiar with the offender, they had previously known him as one of the locals, and it was because of that the victim's mother reported him to the area chief (PW6) who effected his arrest and handed him over to Kabertegan Police station.
12. Having been placed at the material scene at the material time, the Appellant's alibi defence was effectively disproved and rendered an afterthought. His conviction by the trial court was therefore sound and proper and is hereby affirmed.
13. The twenty years imprisonment sentence imposed upon the Appellant by the Trial Court was lawful and deserving in the circumstances. The Appellant has not demonstrated any tangible grounds for this court to interfere with the sentence. In sum this appeal is wanting on merit and hereby dismissed in its entirety.

**J.R. KARANJAH**

**JUDGE.**

**DATED AND DELIVERED THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2024.**

In presence of:

Appellant present in person,



Mr. Karanja state counsel

