



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL APPEAL NO 16 OF 2018**

**EDWARD MURIUKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Appeal from original Conviction and Sentence in Nanyuki CM Sexual Offence Case No 25 of 2016 – L Mutai, CM)**

**J U D G M E N T**

1. The Appellant herein, **EDWARD MURIUKI**, was convicted after trial of *defilement* contrary to **section 8(1) and (4)** of the *Sexual Offences Act, No 3 of 2006*. It was alleged that on 28/02/2015 at [Particulars Withheld] Village of Ngusishi Location in Meru County he unlawfully and intentionally caused his penis to penetrate the vagina of one JK, a child aged 17 years. On 27/02/2017 he was sentenced to 15 years imprisonment. He appealed against both conviction and sentence.
2. In the cause of prosecuting his appeal, the Appellant told this court that he had reconsidered the appeal, and that he no longer wished to contest the conviction as he was satisfied with it; he wished only to pursue the appeal against sentence. He asked to be forgiven for the offence he committed; that he was 30 years old now; that he wished to go and look after his child; and that he should be given another chance in life.
3. The child that the Appellant was talking about was the child born of the complainant (PW1) after the defilement he was charged with! DNA evidence produced in evidence established that indeed he was the father of the child. The Appellant himself in his sworn defence freely acknowledged that he was the father of the child.
4. The age of the complainant was established by her birth certificate which was produced in evidence. She was at the time of the defilement 16 years and 8 months old, though it was stated in the particulars of the charge that she was 17 years old.
5. Penetration was of course proved beyond reasonable doubt by the DNA evidence that showed the Appellant to be the father of the child born of the complainant after the defilement.
6. Indeed the Appellant never denied the defilement; what he did was try to show that there was a relationship between him and the complainant after she allegedly informed him that she was 20 years old. The testimony of the complainant however, showed clearly that there was never any relationship between them, and that the defilement was a one-off event forced upon her by the Appellant when she went to his shop to buy something. When the complainant became pregnant after the defilement the Appellant then tried all his best to make it appear that there was a relationship between him and her, including buying her a mobile phone. He did not succeed.
7. If indeed there had been a love relationship between the Appellant and the complainant (albeit illicit) this court would have carefully considered the position of the child. The court however does not believe that there was any such relationship. The defilement was a one-off incident at which the Appellant forced himself upon the complainant as a result of which she became pregnant. After the defilement came to light the Appellant then went about a deception intended to mislead to appear that he had been in a love relationship with the complainant. His statement in this court of his desire and intention to take care of the child is no more than continuation of the deception to enable him to escape his due punishment.
8. In conclusion, I am satisfied that the Appellant was convicted upon good and sound evidence; the charge was proved against him beyond reasonable doubt.
9. As for punishment, the Appellant truly deserved a custodial sentence, and the 15 years imprisonment was the mandatory minimum provided by the law. I have no reason to interfere with it.
10. I find no merit in the Appellant's appeal against both conviction and sentence. It is hereby dismissed in its entirety. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 31<sup>ST</sup> DAY OF JANUARY 2022**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2022**