



REPUBLIC OF KENYA



**Chanzo v Republic (Criminal Appeal E011 of 2022)
[2022] KEHC 15662 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E011 OF 2022
JR KARANJA, J
NOVEMBER 24, 2022**

BETWEEN

WYCLIFFE OCHIENG CHANZO APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Wycliffe Ochieng Chango is the appellant herein on account of the conviction and sentence meted upon him by the Chief Magistrate at Busia in CMCC SOA No 47 of 2020 for the offence of defilement, contrary to s 8 (1) read with s 8 (3) of the *Sexual Offences Act*. It was alleged that on unrecalled date in the month of March 2020 at [particulars withheld] – Busia County, the appellant defiled “MN” a girl child aged fifteen (15) years. There was an alternative count of indecent act, contrary to s 11 of the *Sexual Offences Act*. However, after a full trial, the appellant was convicted and sentenced on the main count.
2. Being dissatisfied with the conviction and sentence, the appellant through Balongo & Co Advocates preferred this appeal on grounds set out in the petition or memorandum of appeal filed herein on April 28, 2022. The republic (respondent) opposed the appeal through the office of the Director of Public Prosecution (DPP).
3. At the hearing of the appeal which proceeded by way of written submissions, the learned counsel, Mr Jumba, appeared for the appellant while the learned Prosecution Counsel, M/s Kihumba, appeared for the republic. Both counsels filed their respective submissions for and against the appeal. This court considered the rival submissions together with the grounds of appeal and as is the norm, re-visited the evidence availed before the trial court for purposes of arriving at its own conclusions while bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.



4. In that regard, the prosecution case was briefly that the child victim (PW1) was at the material time aged about fifteen (15) years and known to the appellant as a neighbor and customer. The appellant operated a shop or kiosk in which he sold buns (*mandazis*) and on several occasions in the month of March 2020, he sexually preyed upon the child victim and enticed her using his *mandazi* and money to not only defile her but also buy her silence. However, his unlawful antics were discovered by the child's guardian EO (PW2) and reported to the police.
5. PC Immaculate (PW 4), carried out the necessary investigations and in the process referred the child for medical examination at Nangina Dispensary. Edwin Imo (PW 3), a Clinical Officer at the said dispensary carried out the necessary examination after which he compiled and signed the medical examination form (P3) (PEx2) confirming that the child was not only defiled but also impregnated. On completion of investigations, the appellant was charged with the present offence.
6. The defence case was a denial and a contention that the appellant was implicated for no reason but due to an existing land dispute between him and his relatives including the child's guardian (PW2). He opined that a DNA report would have established the truth if the analysis had been done.
7. After considering the evidence in its totality, the trial court concluded that the case against the appellant was established against him by the prosecution beyond any reasonable doubt. This court, having re-evaluated the evidence was satisfied that the appellant's conviction was safe and proper for reasons that the material ingredients of the charge were fully established through production of the medical report (PEx2) and the child's birth certificate (PEx1) as well as the testimony of the child victim (PW1) and that of her guardian (PW2). Both were found to be credible witnesses by the trial court.
8. In any event, the fact that the child was actually defiled remained undisputed. The appellant, however, disputed the fact that he was responsible for the unlawful act, but evidence from the child disproved his allegations of innocence. He was no stranger to the child. He admitted as much but offered no conceivable reason as to why the child would implicate him from "out of the blues".
9. Indeed, the credibility and cogency of the prosecution case against the appellant made it clear that this was not a case which required "splitting of the hair" as alleged in the appellant's submissions especially taking into consideration that the appellant's defence was disproved by the prosecution and effectively rendered a "cock and bull" story. The sentence of twenty (20) years imprisonment meted out against the appellant was lawful and calls for no interference by this court.
10. In sum, this appeal is devoid of merit and is hereby dismissed in its entirety.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[DATED AND DELIVERED THIS 24TH DAY OF NOVEMBER, 2022]

