



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NANYUKI
CRIMINAL APPEAL NO 48 OF 2017

FREDRICK OCHIENG OUMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Conviction and Sentence in Nanyuki CM Criminal Case No 152 of 2016 – W Gichimu, PM)

J U D G M E N T

1. The Appellant herein, **FREDRICK OCHIENG' OUMA**, was convicted after trial of three (3) counts of *committing an indecent act with a child* contrary to **section 11(1)** of the *Sexual Offences Act, 2006*. It was alleged that on diverse dates between 1st and 31st January 2015 at Burguret area in Kieni East Sub-County within Nyeri County, he intentionally and unlawfully touched the genitals of each of the three complainants named in the charge sheet, all being boy children aged respectively 14, 13 and 11 years.
2. On 06/03/2017 the Appellant was sentenced to serve twelve (12) years imprisonment on each count, sentences to run concurrently. He has appealed against both conviction and sentence upon the following grounds -
 - i. That the charges were not proved beyond reasonable doubt.
 - ii. That the trial court did not consider his defence.
 - iii. That the trial court in sentencing him did not consider the time spent in remand during trial, this resulting in a sentence that was manifestly excessive.
3. Learned counsel for the Respondent supported the convictions, arguing that each charge was proved beyond reasonable doubt. As for the sentences, learned counsel submitted they were well-merited, given the circumstances of the case.
4. I have read through the record of the trial court in order to evaluate the evidence placed before that court and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however, that I neither saw nor heard the witnesses testify, and I have given due allowance for that fact.
5. The three complainants, PW1, PW2 and PW3 testified under oath after *voire dire* examinations by the trial court. Their respective ages of 14, 13 and 11 years were proved beyond reasonable doubt by their birth certificates produced in evidence.
6. They each gave graphic testimony of how the Appellant would entice them, separately, with tea and cake or other food, and then lay them on his bed in his house, undress them fully or partially and then fondle them, or make them fondle him, and caress them with his penis on their buttocks. He never penetrated them.
7. The Appellant was well-known to each of the boys; they all referred to him as a friend, they each had been to his house many times, either to visit, or sent there by their mothers to deliver to the Appellant milk or vegetables. He was their neighbour. Every now and then PW1 and PW2 would spend the night at the Appellant's house in his bed with him.
8. The abuse went on for a period of about a year.
9. The trial court accepted the testimony of each complainant and gave its reasons for believing them. It also considered the defence of the Appellant given under oath; that defence was that the charges were trumped up on account of grudges that the complainants bore him for not

allowing them to graze in the shamba of his employer of which he was the caretaker. The court rightly rejected that defence which was clearly not plausible at all, given the testimonies of the complainants and their two mothers (PW2 and PW3 were brothers).

10. Upon my own evaluation of the evidence, I am satisfied beyond reasonable doubt that the Appellant was convicted upon good and sound evidence. The convictions are safe and cannot be faulted.

11. As for the sentences, the Appellant was clearly a serial abuser of multiple children; there was repeated abuse of each of the three children; and he used threats of violence to silence them. That was why the abuse went on for so long. He richly deserved the sentences that he got.

12. In the result, I find no merit in the appeal against conviction and sentence. The same is hereby dismissed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 18TH DAY OF AUGUST 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 21ST DAY OF OCTOBER, 2021