REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 123 OF 2017

PATRICK LUVAI CHIGADI.... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal from the Judgment of Hon. F. Kyambia, Senior Principal Magistrate, delivered on the 18th May, 2017 in Mombasa Chief Magistrate's Court Criminal Case No. 314 of 2015).

JUDGMENT

1. The appellant was convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006. The particulars of the charge were that on the 15th day of February, 2015 at [Particulars Withheld] area of Likoni Sub-County within Mombasa County unlawfully and intentionally caused his penis to penetrate the vagina of AN [name withheld] a child aged two and a half years. He was sentenced to 30 years imprisonment.

2. The appellant was aggrieved by the decision of the Trial Court and filed a petition and grounds of appeal. On 28th November, 2018 he filed amended grounds of appeal, with leave of the court. They are that –

> i. The Learned Trial Magistrate erred in law and fact by failure to comply with Section 36(1) of the Sexual Offences Act No. 3 of 2006;
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> ii. The Learned Trial Magistrate erred in law and fact by not considering that the prosecution case was marred by massive contradictions, discrepancies, and unreliability which could have given him the benefit of the doubt;
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> iii. The Learned Trial Magistrate erred in law and fact by conducting *voir dire* examination in an unprofessional manner which was in breach of the constitution; and
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> iv. The Learned Trial Magistrate erred in law and fact by failing to consider the provisions of Section 329 of the Criminal Procedure Code as mitigation is part of the trial process.

3. In his written submissions filed on 28th November, 2018, the appellant stated that the Doctor's (PW5's) evidence did not prove defilement notwithstanding that the victim had abrasions at the vestibule and the hymen was broken. The appellant wondered why the minor's (victim's) clothes were changed. He indicated that the laboratory report showed that there was no presence of spermatozoa and that urinalysis test was not positive. The appellant stated that the findings established that he had not done anything bad to the child.

4. He submitted that when PW7 from the Government Chemist did DNA profiling, he found semen of two people and the victim's pant gave DNA of more than one person. The appellant stated that on cross-examining PW7, he said that sperms were found on the dress. The appellant contended that the said evidence contradicted that of PW5, Dr. Samira Osman who said that the child was taken to hospital a day after the incident and that sperms die after a few hours. The appellant pointed out that as per the evidence of PW5, the sperms were dead whereas according to PW7 the sperms were alive. The appellant argued that since sperms die after a few hours, the ones found on the victim's dress could not be his.

5. The appellant argued that there was no evidence of penetration and stated that lacerations, abrasions and a broken hymen on the victim could have been caused by other facts such as playing. He cited the case of **Odhiambo v Republic** [2005] KLR and **Maina v Republic** [1970] EA 370.

6. The appellant contended that he was convicted on the evidence of a minor which lacked corroboration and that the charge against him was

fabricated. He claimed that this case was aimed at removing him from the society of garbage collectors which had been sponsored by the County Government of Mombasa.

7. The appellant further submitted that PW1 (the victim's mother) had malice and her evidence was ill-intentioned as the case was filed after a disagreement on non-payment of the services he offered in garbage collection. He pointed out that the evidence of some witnesses was at variance as one testified that the offence occurred in an unfinished building and the other one that it happened under a tree, as was stated by PW1 and the minor. The appellant wondered if it would have been logical for him to burn litter by the roadside near the scene of the incident.

8. The appellant submitted that if he had defiled the victim, at her age, her private parts would have been torn apart and she would not have been able to walk. He further submitted that the victim (PW6) testified that she was taken to a tree by a bad uncle who collects garbage whereas PW1 said that she found the appellant burning rubbish.

9. He relied on the case of **Reagan Mokaya v Republic** [2006] eKLR, where the court allowed an appeal due to contradictions and discrepancies in the prosecution's case. He also relied on the case of **Augustino Njoroge v Republic** Criminal Appeal No. 99 of 1986, where the court held that contradicted evidence is unreliable.

10. The appellant stated that a person by the name Saumu who told PW1 that her child was about 15 metres away from where they were, was not called to give evidence.

11. The appellant contended that *voir dire* examination was not done properly as required by way of questions and answer format. He prayed for his appeal to be allowed.

12. Ms. Mwangeka, Prosecution Counsel filed written submissions on 12th February, 2020 to oppose the appeal. She stated even though the appellant contended that Section 36(1) of the Sexual Offences Act was not complied with, the application of the said provisions of the Sexual Offences Act have been held to be discretionary and that proof of defilement is dependent on the evidence of the victim and not DNA testing. To bolster her submissions, she relied on **Charo Changawa Karisa v Republic** [2018] eKLR.

13. She stated that PW2 produced an immunization card that gave the victim's date of birth as 7th July, 2012 which established that she was 2 years and 7 months and 22 days old at the time the offence was committed. Ms. Mwangeka relied on the case of **Martin Okello Alogo v Republic** [2018] eKLR in submitting that the age of a minor can be proved by medical evidence or other cogent evidence.

14. In responding to the appellant's submissions that the case against him was fabricated, she stated that the case by the prosecution was based on sound, cogent and consistent evidence. She further stated that all witnesses gave consistent accounts of how the appellant was seen on the material day carrying the complainant towards an unfinished building raising suspicion. She further stated that the said action prompted the complainant's mother to search for her and only found her looking disheveled with soiled clothing and on examining her, saw that she had been defiled.

15. On the issue of the sentence, the Prosecution Counsel submitted that the victim was 2 and a half years old and that she was mercilessly assaulted by the appellant when playing outside. It was submitted that a strong deterrent sentence was required. She urged this court to uphold the conviction and the sentence of 30 years imprisonment.

THE EVIDENCE ADDUCED BEFORE THE LOWER COURT

16. PW1, DMM [name withed] testified that her daughter by the name AM also known as "A" [name withheld] was 2 years and 8 months old as at 3rd March, 2015. She indicated that "A" was born on 7th July, 2012. PW1 had in court her child's health booklet from Kangundo Hospital. She explained that it bore the name of QN [name withheld] as "A" had been initially named "Q" but her father later gave her the name "A". It was PW1's evidence that on 15th February, 2015 at 1:00 p.m., she was in their house as "A" and her sister "C" were playing outside. She indicated that her neighbour by the name Fatuma went to her house and asked her where her children were. She informed her that they were playing outside. On asking her why she was inquiring about them, Fatuma told her that she had seen a litter man (garbage collector) carrying her younger child. She indicated that on getting out of her house she did not see "A" and she started looking for her as she walked towards Shelly Beach. She further indicated that she met a lady who stopped her as by then she was running. She asked PW1 why she was running and she explained to the lady, who in turn told her that she had seen a man carrying a small girl enter some unfinished buildings in that area. That she ran to the buildings, searched but did not see anything. She went to the beach in vain and then went back to her house. She called her husband and informed him about the issue.

17. PW1's evidence was that her friend "M" went and offered to help her look for "A" and that they went towards Legacy. That "M" told her that she had seen the culprit, who was the appellant. She indicated that she had been seeing the appellant in their neighborhood because he used to regularly collect garbage in that area. That she asked him where her child was but he denied knowing anything about what PW1 was talking about.

18. It was PW1's evidence that while still at the place where she had seen the appellant, the lady by the name Saumu told her that she had seen her child with the garbage collector. That she went to where they were and told PW1 that the child was about 15 metres away. PW1 indicated that on looking across the road, she saw "A" walking from the unfinished buildings. On meeting "A", PW1 observed that her pink dress was soiled. She also noted that "A's" pink pant was wet. On checking her private parts, she saw that they were red and swollen.

19. PW1 indicated that she asked "A" what had happened and she said that uncle had done *"tabia mbaya"* (bad deeds) to her. PW1 further stated that she examined "A" in the presence of Fatuma and Saumu. She stated that the appellant was beaten and taken to the police station and "A" was also taken there. She later took "A" for examination in hospital and a PRC form was filled. She indicated that she was later issued with a P3 form which she took to Coast Province General Hospital (CPGH) where it was filled. She produced the child health booklet as an exhibit in the lower court.

20. PW2 was Salim Ashaman. Her evidence was that on 15th February, 2015 at 12:45 p.m., she received a telephone call from her neighbour called Fatuma who told her that she had seen PW1's child going to the beach with the appellant. PW3 stated that she knew that Fatuma was referring to PW1 who was her immediate neighbour, who was known as Mama Angle (sic). PW2 indicated that she called PW1 and told her what she had been told by Fatuma.

21. PW2 decided to join PW1 in looking for the child. It was her evidence that when she reached where Fatuma was, she asked her if she had seen PW1 and as she was talking to her she saw "A" coming from the direction of the unoccupied buildings. She indicated that she tried to talk to "A" but she looked disordered. She stated that she went to where "A" was and saw that her inner pant was interfered with. She laid her down and on checking her private part she saw wetness on her vagina, which appeared to be men's seed (semen). PW2 called Fatuma and others to go and see what she had seen. She indicated that "A" was wearing a pink dress.

22. It was PW2's testimony that just then, she saw the appellant coming from the scene with many other people. She indicated that the direction "A" was coming from was the same direction the appellant and the others had come from.

23. PW3 [SM] name withheld, testified that on 15th February at 12:45 p.m., when seated outside her house she saw the appellant passing about 2 metres from her carrying "A". PW3 indicated that she had known the appellant for 5 years as a local garbage collector. PW3 stated that the appellant told her that he was taking "A" to her home but she became suspicious because "A's" home was not located in the direction the appellant was heading to. It was PW3's evidence that she called a lady whom she knew, who lived next to "A's" home as she did not have the phone number for her mother.

24. PW3 indicated that after a short while, "A's" mother went where she was and asked the direction "A" had been taken. PW3 stated that she pointed towards the direction that PW1's daughter had been taken. PW3 stated that PW1 went away and returned after a short while saying that she had not seen "A". PW3 told her that she was sure about it and PW1 went back towards the same place. PW3's evidence was that after a while PW2 went to her and asked if she had seen PW1. PW3 told her what she had seen. After a short while, she heard PW2 calling her saying *"mtoto ndiyo huyu"* (the child is here).

25. PW3 indicated that she rushed to call PW1 and met her with some people who were ordering the appellant to show them where "A" was. PW3 stated that the appellant was roughed up but he said that he had not known (sic) the child. PW3 then told the crowd that the child had been found and the appellant was taken there.

26. PW4 was No. 96847 PC Vivian Muimbi. She was assigned the case on 16th February, 2015 as an Investigating Officer. She recounted the report she received from PW1. She also stated that she tried to talk to the victim but due to her age she was unable to communicate properly and only said that uncle had done bad things (*tabia mbaya*) to her. PW4 then charged the appellant who had been arrested and taken to the police station. It was PW4's evidence that the victim was seen at CPGH, where her PRC and P3 forms were filled. PW4 stated that she took the pant and dress that the victim ("A") had been wearing to the Government Chemist. She later received the report therefrom which found that "A's" pant had human semen.

27. PW5, Dr. Samira Osman of the CPGH produced the P3 and PRC reports. It was her evidence that she was familiar with the handwriting of Dr. Ibrahim whom she had worked with. She said that the results of the examination were that the victim had an abrasion at the vestibule and her hymen was broken. She indicated that when she examined the victim on 2nd February, 2015 the injuries were 5 days old. She also stated that the injuries were caused by a blunt object. She assessed the degree of injury as maim.

28. In regard to the PRC form, PW5 indicated that the victim was examined on 16th February, 2015 after the incident occurred on 15th February, 2015. The PRC form contained the same findings as to the abrasions the victim had on her vestibule and that she had a broken hymen.

29. The victim [A] name withheld, a child aged 2½ years testified as PW6. She stated that a bad uncle who was the appellant took her to the trees and did bad manners and she felt pain. She further stated that her Mama found her at the trees with the bad uncle and she took her to the house. PW6 stated that she told her Mama (PW1) and Daddy and what her bad uncle had done to her. She explained that the bad uncle collects garbage.

30. The Government Analyst, George Lawrence Ogunda testified as PW7. He stated that on 27th March, 2015 and 30th September, 2015 he received exhibits from a Police Officer by the name Vivian Muimbi [PW4] of Likoni Police Station. He examined the victim's dress and pant, the appellant's blood and a buccal swab from the victim. He found that the pant tested positive for human semen and the clothes and pant gave DNA of more than one person, which was of a mixed profile. He further stated that the pant had a DNA profile from samples B and C profile for the appellant and the victim, respectively. He indicated that the profile of the dress was partial. He produced the report, the victim's pant and dress and exhibit memo form before the Trial Court.

31. In his unsworn defence, the appellant stated that charges were leveled against him but he did not defile the victim as alleged. He further said that he was a resident of Likoni and he was not working.

ANALYSIS AND DETERMINATION

32. The issues for determination are:-

i. If Section 36(1) of the Sexual Offences Act was complied with;

ii. If there were massive contradictions and discrepancies in the prosecution evidence;

iii. If *voir dire* examination was properly conducted;

iv. If the prosecution proved its case beyond reasonable doubt;

v. If the sentence imposed on the appellant can be regarded as being either harsh or excessive.

If Section 36(1) of the Sexual Offences Act was complied with.

33. The collection and handling of exhibits forwarded for DNA sampling happened in 2 stages. The first was at the time when the victim's pant and dress were taken to the police station by her mother and the Investigating Officer took the said exhibits to the Government Chemist, Mombasa. From the exhibit memo form dated 27th March, 2015 the exhibits which were taken to the Government Chemist were a pant and a dress with a stain marked "A" and blood sample from the suspect marked "B". The 2nd stage was when a blood sample was taken from the appellant following a court order which was given on 23rd March, 2015.

34. It is worth noting that the appellant said that he had no objection to having the said sample taken although he said that he had been asked for blood and urine samples. Notably, PW7, the Government Analyst produced DNA results for the exhibits forwarded to him. The inference that this court draws from the said report is that the initial blood sample drawn from the appellant at the hospital was used in carrying out a blood test for VDRL and Hepatitis B, which examination was done as per the laboratory report dated 19th February, 2015.

35. The appellant was wrong in submitting that the DNA profile as per the Government Analyst's report showed semen of two people. That was an erroneous interpretation made by him. The DNA report and the evidence of PW7 was to the effect that the pant of PW6 was found to have DNA profile for 2 people. The Government Analyst in his examination in-chief and cross-examination said that the mixed DNA was for the appellant and the victim. The Government Analyst also found that the pant tested positive for human semen after conducting an acid-phosphate test on the said pant. A partial DNA was found on PW6's dress.

36. The appellant tried to show that there was a conflict between the evidence of PW5 who said that no spermatozoa was found on the vaginal swab taken from PW6 as sperms die after a few hours, yet the Government Analyst found semen on PW6's pant. This court notes that the scientific method used at the CPGH may not have been the same one used by the Government Analyst who used the acid-phosphate test to detect semen from PW6's pant. The appellant should have sought clarification from PW7 on the questions he had. Further, the samples which were tested in the hospital laboratory were different from the ones tested by the Government Analyst. This court has no reason to doubt that the Government Analyst's report gave an accurate report of the findings made. The said forensic evidence was conclusive prove of the fact that PW6 and the appellant were in close contact on the day of the incident. The said fact will be addressed by this court later.

If there were massive contradictions and discrepancies in the prosecution evidence.

37. The issue raised by the appellant on whether PW1 was in church or in their house on the day the incident happened is not a contradiction. It is clear that she was in her house and she could hear her children playing outside. The fact that it was at another part of the proceedings recorded that she was in church, appeared to have been an error on the part of the recording of the proceedings by the Trial Court. A reading of the entire evidence of PW1 indicates that she was at her house as she went looking for PW6 after she was informed that the appellant had been seen carrying her.

38. The appellant claimed that there was a contradiction in the evidence of PW1 who talked of PW6 having been taken to an unfinished building and what PW6 said was that the bad uncle took her to the trees and did bad manners to her.

39. In regard to where PW6 was taken by the appellant, PW1 was given that information by PW2 after she was informed of the same by PW3. PW1 was inside her house when PW6 was taken away. When PW2 was cross-examined by the appellant, she said that there was a thicket in the direction she saw "A" coming from, after she had gone missing. This court therefore finds no contradiction in the evidence of PW6 that the appellant took her to some trees, as a thicket is made up of trees.

40. PW3 saw the appellant taking PW6 to unfinished buildings. PW6's evidence cannot be doubted as she could have been taken beyond the unfinished buildings to an area which had trees. When her mother went to look for her in the unfinished buildings she could not see her. This court therefore believes the evidence of PW6 that she was taken to a place with trees, a fact which was corroborated by PW2, who said in her evidence that the appellant came from the direction where PW6 came from.

41. On the issue of contradictions, the Court of Appeal decision in **Erick Onyango Odeng' v. Republic** [2014] eKLR, which cited with approval the Uganda Court of Appeal case of **Twehangane Alfred v. Uganda** Criminal Appeal No. 139 of 2001, [2003] UGCA, 6 is applicable herein. The said Court held as follows:

> **"With regard to contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution case."**

40. In Dickson **Elia Nsamaba Shapwata & Another v Republic** Cr App No. 92 of 2007 the Court of Appeal of Tanzania addressed the issue of discrepancies in evidence and concluded as follows, a view that was adopted by the Court of Appeal in Kenya, in **Phillip Nzaka Watu** [2016] eKLR. The Court stated thus-

"In evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statements. The court has to decide whether inconsistencies and contradictions are minor, or whether they go to the root of the matter."

41. Still on the issue of contradictions, discrepancies and inconsistencies, the Supreme Court of India in the case of State of **U.P v Naresh (2011) 4SCC, 324,** after considering a large number of its earlier Judgments held as follows:-

"In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to the normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omission amounts to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court such evidence cannot be safe to rely upon.

However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which evidence can be rejected in its entirely. The court has to form its opinion of the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggeration per se does not render the evidence brittle but it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/ materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited." *(emphasis added).*

42. It is the finding of this court that there were no missive contradictions, inconsistencies and discrepancies as claimed by the appellant, in the evidence of prosecution witnesses which can vitiate the evidence tendered by prosecution witnesses.

If *voir dire* examination was properly conducted.

43. The victim of the offence was very young. At only 21/2 years of age, the Trial Magistrate could not have done a prolonged *voir dire* examination on her. The Trial Magistrate asked her very simple questions. The Court of Appeal in **Maripett Loonkomok v Republic** [2016] eKLR, when considering the issue of *voir dire* examination stated thus-

"….for instance, in the past the courts insisted that *voir dire* examination must be in the form of a dialogue, with the trial court recording questions posed to the child and the child's answers nearly verbatim in the first person before drawing its conclusion on the question of suitability of the child. See *Johnson Muiruri v R (1983) KLR 447. The courts today accept both the question and answer format and the recording of the child's answers only. See James Mwangi Muriithi (supra). What is constant is that, whatever format the court adopts it must be on record. It is equally settled that by dint of sections 208 and 302 of the Criminal Procedure Code, the law allows cross-examination of a witness who does not give evidence on oath. See Nicholas Mutua Wambua and another v Msa Criminal Appeal No.373 of 2006."*

44. This court therefore holds that there was no error in the manner in which *voir dire* examination of the victim was done by the Trial Magistrate when he recorded PW6's answers to the questions put across to "A". The method adopted by the said Magistrate was acceptable as per the Court of Appeal decision in **Maripett Loonkomok v Republic** (supra).

If the prosecution proved its case beyond reasonable doubt.

45. The appellant was convicted based on both direct and circumstantial evidence. The direct evidence adduced was that on 15th February, 2015 at 12:45p.m., PW3 saw the appellant carrying PW6, whom she knew, as she used to attend a school near her home. That the appellant said that he was taking the child (PW6) to her home but PW3 became suspicious because she knew that PW6's home was not in the direction that the appellant was heading to. The circumstantial evidence adduced was that when PW1 went to look for PW6, she did not find her in the unfinished buildings where PW3 had seen them heading to. She alerted PW2 who in turn informed PW6's mother. PW6 was later seen walking from the direction of the unfinished buildings, which were located in the same area where the appellant emerged from.

46. When examined, PW6's private parts were found to have been interfered with as they had a wetness akin to semen as per what PW2 noted. PW1 observed that PW6's private parts were red and swollen. PW6 told her mother that uncle had done *"tabia mbaya"* to her. PW1 also saw that the pant PW6 had been wearing was wet. The said pant and pink dress which PW6 had been wearing at the time of the incident, were on examination by the Government Analyst (PW7) found to contain both PW6's and the appellant's DNA. The pink dress was found to contain human male semen.

47. The Government Analyst's report was conclusive circumstantial evidence that PW6 had come into contact with the appellant on 15th February, 2015. It can therefore be safely concluded that the appellant was the one who defiled PW6 and in the process, his semen got onto PW6's pink dress and her pant. There was no other explanation available on the record to demonstrate how his semen could have found its way to PW6's pant and pink dress. The abrasions on PW6's vestibule and broken hymen were consistent with defilement.

48. On the claim by the appellant that PW1 fabricated the evidence against him because of a grudge, when PW1 testified, she stated that she had no grudge against the appellant. On being cross-examined by him, she said that he was a garbage collector but her garbage was collected by another group and not the appellant's group. PW1 stated that it was not true that she refused to pay garbage collection charges to the appellant and that when he went for payment, she chased him away and warned him not to return to that place.

49. On the claim that the evidence against the appellant was fabricated, this court holds that 2 independent witnesses (PW2 and PW3)

testified on what they witnessed on the day in issue. They and PW1 could not have fabricated the evidence against the appellant. If they had done so, forensic evidence would not have connected the appellant to the commission of the offence of defilement.

50. The allegation by the appellant that PW6 was coached cannot hold since her evidence is not the only one which formed the basis of his conviction. She could not have been coached to say that the appellant had taken her to some trees, since her mother (PW1) was informed by PW3 that she had seen the appellant carrying PW6 towards some unfinished buildings. It is thus obvious that the child was not coached at all on what to say in court.

51. The claim by the appellant that Saumu was not called to testify is not correct. Saumu adduced evidence as PW3. The original handwritten proceedings confirm so, but there is an apparent error in the typed proceedings as the name Saumu was been typed as "Sarma". The appellant's contention on the failure by the prosecution to call the said Saumu to adduce evidence is thus unfounded.

52. From the totality of the evidence which was adduced against the appellant, it is my finding that the prosecution proved its case beyond reasonable doubt. I therefore uphold the conviction against the appellant.

If the sentence imposed on the appellant can be regarded as being either harsh or excessive.

53. Contrary to the appellant's submission that the Trial Magistrate did not consider his mitigation, the lower court proceedings clearly indicate that he did. The said Magistrate stated that he had considered the appellant's mitigation and that he was a first offender. The provisions of Section 329 of the Criminal Procedure Code were thus complied with by the Trial Magistrate.

54. In regard to the sentence meted out to the appellant of 30 years imprisonment, this court's finding is that it was lenient. The appellant defiled a toddler aged 2½ years. Any man who looks at a child of such tender age as an object of sexual gratification is deviant of any moral fiber and needs to be locked in jail for the rest of his life. This court is of the view that the appellant deserved to be imprisoned for life. The prosecution did not file a notice of enhancement of sentence. For the said reason, this court upholds the sentence of 30 years imprisonment imposed on the appellant. In line with the provisions of Section 333(2) of the Criminal Procedure Code, the sentence shall be effective from 18th February, 2015 when the appellant was first arraigned in court. The appeal is hereby dismissed in its entirety. The appellant has 14 days right of appeal.

DELIVERED, **DATED** and **SIGNED** at **MOMBASA** on this **30th** day of **October, 2020. Judgment delivered through Microsoft Teams online platform due to the outbreak of covid-19 pandemic.**

NJOKI MWANGI

JUDGE

In the presence of:-

The appellant

Mr. Muthomi, Prosecution Counsel - for the DPP

Mr. Oliver Musundi- Court Assistant.