



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CORAM: D.S MAJANJA J.**

**CRIMINAL APPEAL NO. 117 OF 2018**

**BETWEEN**

**VICTOR WAKO .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from the original conviction and sentence of Hon. R.M Oanda – PM dated 12<sup>th</sup> November 2018 at the Principal Magistrate’s Court at Kilgoris in Criminal (Sexual Offences) Case No.16 of 2018)**

**JUDGMENT**

1. The appellant, **VICTOR WAKO**, was charged with the offence of defilement contrary to **section 8(1) and (3)** of the *Sexual Offences Act* (“the *Act*”). The particulars of the offence were that in the month of January 2018 in Transmara West District of Narok County within Narok County, he unlawfully caused his penis to penetrate the vagina of RSS, a child aged 15 years. He was convicted and sentenced to serve 15 years’ imprisonment.

2. The appellant now appeals against conviction and sentence and the thrust of his appeal as I understand from reading his petition of appeal and written submissions is that the prosecution did not prove every element of the offence.

3. In order prove defilement, the prosecution must show that the accused did an act that amounted to penetration of a child. “Penetration” under **section 2** of the *Act* means, “*the partial or complete insertion of the genital organs of a person into the genital organs of another person.*”

4. I have analysed the evidence as required by the first appellate court and having done so I am constrained to dismiss this appeal for the reason that PW 1 stated that she was subjected to an act of penetration in January 2018 but she did not tell her mother. Her description of what the appellant did to her was clear and concise and was not shaken in cross-examination. She knew the appellant as he was employed by her mother, PW 2, at least a year prior to the incident.

5. In April 2018, PW 1 found the accused quarrelling with the child and it is at this point that the child told her that she was pregnant and disclosed that he had been sexually assaulted by the appellant. When she was taken to the hospital on 18<sup>th</sup> January 2018, she was found to be pregnant. The appellant denied that he committed the act of penetration.

6. That PW 1 was aged 15 years old was confirmed by the age assessment report. Since the child was 15 years old, the mandatory minimum sentence that was imposed is affirmed.

7. The appeal is dismissed.

**Dated and delivered at Kisii this 30<sup>th</sup> day of April 2019.**

**D.S MAJANJA**

**JUDGE**

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.