

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRA NO. 11 OF 2017

INEA JINGA AMERE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Being an appeal against the conviction and sentence of the Chief Magistrate's Court at Kisumu (Hon. Martha Agutu RM) dated the 21st February 2017 in Kisumu CMCCRC No. 9 of 2015

JUDGMENT

The appellant was convicted and sentenced to serve life imprisonment for defilement of a child Contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act.

The particulars of the charge were that on 25th July 2015 at [particulars withheld] area of Kisumu East District he intentionally caused his penis to penetrate the vagina of **A Z A** a child aged 11 years.

In his petition of appeal the appellant faulted the Trial Magistrate for not giving him an opportunity to cross-examine the complainant. He also contends that the Trial Magistrate did not consider his defence that there was a grudge between him and the family of the complainant and that the prosecution evidence was inconsistent and full of contradictions. He also alleged that his right to a fair trial under Article 50(2) (j) of the Constitution was violated.

At the hearing of this appeal the appellant submitted that he was framed after being accused of stealing 13,000/=. Those who apprehended him beat him and took the 2,000/= he had and threatened to kill him and from that time he would sleep in a toilet. He alleged not to have understood the proceedings during the trial and expressed doubt that the Trial Magistrate recorded everything he said. He spoke of a photo that was taken after he was stripped but which he did not see. He also alleged that the witnesses the prosecution called were hired.

As the first appellate court I have considered the evidence adduced at the trial and I am satisfied that the charge against the appellant was proved beyond reasonable doubt. A Birth Certificate was produced which proved that the complainant was 11 years old when this offence was committed. The complainant knew the appellant very well as their homes were not very far apart and when he got angry at her for declining to accompany him to his house for what he alleged was to collect maize for her grandmother she readily agreed. She gave a vivid account of what transpired in his house upon arrival and this court believed that he defiled her. Her screams attracted several people among them Zainabu Bilali (**PW5**) who confirmed that the girl's skirt was stained with blood at the back. Dr. Omondi Patrick (**PW1**) who examined her on 27th July 2015 confirmed she was 11 years old and that she had been sexually assaulted. **PW4**, a government chemist told the court that the DNA found on her matched that of the appellant. Administration Police Constable Amos Kipkorir Kogei (**PW6**) found the complainant in the appellant's house. He testified that she was crying and that there was blood on the mattress, the appellant's inner wear and the complainant's skirt. All this makes compelling evidence that the appellant committed this offence. The complainant was very consistent in her evidence and I did not find any contradiction in the prosecution's case generally. His defence metaphors in this appeal is not convincing at all. The record shows that he cross-examined all the witnesses and that he was afforded a fair trial. The sentence imposed is the minimum provided under the law. The appeal therefore has no merit and it is dismissed.

Signed, dated at delivered at Kisumu this 25th day of January 2018

E. N. MAINA

JUDGE