



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 89 OF 2017

(Being an appeal arising from Iten Principal Magistrate's Court in Criminal Case No. 12 of 2016 delivered by N. C. Adalo Resident Magistrate on 22/8/2017)

FRED NAMUGONGOAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The appellant in this case was charged with the offence of **Defilement contrary to Section 8(1) and *(2) of the Sexual offences Act No. 3 of 2006**. He was equally charged with the alternative charge of **Indecent act of a girl contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006**.

2. When this matter came up for hearing of the appeal, by the appellant who was convicted and sentenced to life imprisonment, I did order that both parties file written submissions which they complied.

3. I have perused the proceedings as well as the said rival submissions on record. At the conclusion of the defence case DW2 one Nicholas Wamalwa Masika stated in his evidence in chief that;

“ I know Fred Namugongo. He used to work for Joseph Kiplagat as a herdsman and he is not completely normal.”

4. The appellant thereafter closed his case. The trial court stated as follows;

“ Before judgment is delivered, the accused be taken to Moi Teaching and Referral Hospital for assessment on his mental health, mention on 21/4/2017 for a report from Moi Teaching and Referral Hospital.”

5. Subsequently a report was tabled from Moi Teaching and Referral Hospital which was not conclusive as the doctor wanted to have a word with the members of the appellant's family.

6. On 27/6/2017 the court Executive Officer told the court that the appellant's mother had travelled to Uganda and was unlikely to come back. The court stated that;

“ In the circumstances, the court shall proceed to deliver its judgment on 26/7/2017.”

7. I have perused the mental assessment report dated 19/4/2017 from the Moi Teaching and Referral Hospital and the doctor concluded that;

“ Lots of inconsistencies in the mental assessment.”

8. Clearly the court was right in referring the appellant for mental assessment. However failure to reach a conclusion in my view was detrimental to entire judicial process especially to the appellant. That ground would have aided the trial court in arriving at a proper finding.

9. The Provisions of Article 159 (1) (e) and 27(1) (a) of the Constitution guarantees rights to both the complainant and the accused. In this case it is my considered view that to determine this appeal with the question of the appellant's sanity unclear shall be both prejudicial to the appellant as well as the minor.

10. Consequently, taking the inherent powers of this court, and taking into consideration that the entire process of adjudication of the matter

seemed to have gone well till the penultimate stage I do order that;

- a) **The appellant be and is hereby subjected to a fresh mental status.**
- b) **After the determination hereof, this court shall give appropriate directions on this appeal.**
- c) **Mention before the Deputy registrar of this court to ensure compliance.**

Delivered, signed and dated at Eldoret this 19th day of October, 2018.

H.K. CHEMITEI

JUDGE

19/10/18

In the presence

R. Karanja for the Respondent

Appellant - present

Court Assistant – Christine

Ruling delivered in open court.