



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL APPEAL NO. 109 OF 2017**

**(Being appeal arising from conviction and sentence in Eldoret Sexual Offence No. 129 of 2016 delivered by E. Kigen Resident Magistrate on 24/10/2017)**

**PATRICK SHITAWA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The appellant was charged with the offence of **Defilement contrary to Section 8(1) (3) of the Sexual Offences Act No. 3 of 2006**. The particulars of the charge were that **on diverse dates between 17<sup>th</sup> day of April 2016 to 26<sup>th</sup> day of May 2016 at [particulars withheld] within Uasin Gishu County, unlawfully and intentionally caused his genital organ (penis) to penetrate the genital organ (vagina) of S.K. a child aged 14 years.**
2. The alternative charge was **committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006**. The particulars of the charge were that **on diverse dates between 17<sup>th</sup> day of April 2016 to 26<sup>th</sup> day of May 2016 at [particulars withheld] within Uasin Gishu County, unlawfully and intentionally touched the genital organ (vagina) of S.K. a child aged 14 years with his genital organ (penis).**
3. He was convicted and sentenced to 20 years imprisonment hence this appeal. He has raised several grounds in his appeal but before looking at the same it is worthwhile to summarise the proceedings at the trial court.
4. **PW1 the complainant** told the court that she was 14 years of age and a pupil at [particulars withheld] primary school. She testified of how she got lost after coming and finding that her mother was no longer staying in the same place. She met the appellant who took her to his place and defiled her for a month. By the time she was found she was found to be pregnant.
5. **PW2 N M** the mother to the complainant produced the certificate of birth which showed that she was born on 15/8/2002. she said that the complainant stayed with one M who informed her that she had disappeared.
6. **PW3 Dr Eunice Telet** produced the P3 form on behalf of Dr Yatich who had examined the minor. She was found to be 5 months weeks pregnant. She produced the P3 form.
7. **PW4 M O** confirmed that she stayed with the complainant who later disappeared and was traced to the appellant's home.
8. **PW5 P.C. Dorcas Simiyu** carried out the investigations and preferred charges against the appellant after recording the witnesses statements.
9. when the appellant testified in his defence and denying the charges he made an application for DNA test to be carried out upon the baby. The trial court accepted his request and ordered so. The results clearly proved that the appellant was the father of the child.
10. In his mitigation he prayed for leniency and that he be given a chance to take care of the minor and the baby.
11. So what is the basis of this appeal? I do not think it has any legs to stand. The prosecution clearly managed to establish the age of the minor, the identity of the perpetrator and above all that she was defiled. The result of the defence was the pregnancy which was clearly demonstrated that the appellant was responsible.
12. This appeal is a total waste of Judicial time. The same is hereby dismissed.

Delivered, signed and dated at Eldoret this 19<sup>th</sup> day of October, 2018.

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H.K. CHEMITEI

JUDGE

19/10/18

**In the presence of:**

R. Karanja for the Respondent

Appellant – present

Court Assistant – Christine

Judgment read in open court.