



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 52 OF 2015

BENARD KIPKOECH LANGAT.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant herein was sentenced to life imprisonment for the offence of defilement C/S 8 (1) (2) of the Sexual Offences Act No. 3 of 2006.

The particulars are that on the 30th day of March 2012 at [Particulars withheld] Township –Bureti District intentionally caused his penis to penetrate the vagina of S C a child aged 4 years.

This appeal is conceded on the grounds that the appellant was not accorded adequate time and facilities to prepare his case contrary to Article 50(2) (c)

Secondly, the doctor who filled the P3 form was not called in court to testify so as to answer pertinent question to as to issue of penetration.

Thirdly, there was no proper age assessment.

Article 50(2) (c) of the constitution provides “Every accused person has the right to a fair trial which includes the right to have adequate time and facilities to prepare a defence”.

In the present case, the plea is shown to have been taken on 4/4/2012. Later on the same day at 11.30 a.m the accused is shown to have stated that he had read the witness statements and he was ready.

The case then proceeded to hearing. The accused should have been given enough time to go through read and digest the contents of the witness statements which formed the prosecution case so that he could adequately prepare his case. In the instant case, there was no explanation given as to why it was rushed.

Penetration

The officer who filled the P3 form was not available in court to answer pertinent questions as to whether there was penetration or not. It was said that he had gone for further studies. It was not shown whether he could not be available to testify. Going for further studies is not in itself good reason for application of S. 77 of the CPC. The Doctor could have gone for further studies in the neighbourhood not necessarily abroad.

Age assessment

It is noted that no birth certificate or medical card was produced in court. No age assessment was made by a doctor but the mother did indicate the age of the complainant to be 4 years. Though she did not indicate when the child was born this may have created a doubt as to the proper age of the child complainant.

I concur with the state that this case was not proved beyond reasonable doubt. This appeal succeeds. It is allowed. The conviction is hereby quashed and the sentence set aside. The appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this 28th February 2017 in open court and in the presence of learned counsel for the prosecution Mr. Wawire.

The appellant present. Court assistant Rotich.

M. MUYA

JUDGE

28/2/2017