

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL APPEAL NO 56 OF 2017

[Being an appeal from the original Criminal Case No. 297 of 2013 in Narok Chief Magistrate court, R. v. Vincent Anyanje Manongo]

VINCENT ANYANJE MANONGO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGEMENT

1. The appellant has appealed against his conviction and sentence of 20 years imprisonment in respect of the offence of defilement contrary to section 8 (1) (3) of the Sexual Offences Act No. 3 of 2006.
2. The state has supported both the conviction and sentence.
3. The appellant was convicted on the evidence of the complainant (PW1). PW1 was a child of tender years, who gave sworn evidence after undergoing a *voir dire* examination. The defence of the appellant was that of an alibi.
4. The appellant has raised 5 grounds of appeal in his amended petition to this court. In ground 1 and 2, he has faulted the trial court for convicting him in the face of the fact that the case was poorly investigated. In this regard, I find that the evidence of the complainant was that he knew the appellant before the commission of this offence. The complainant would not have been mistaken as to the identity of the appellant. She positively identified the appellant. She knew the appellant before. She was with the appellant the whole night when the appellant forcefully had sexual intercourse with her. There is medical evidence of Teresia Wahu Macharia (PW4) who was a clinical officer, at Narok District Hospital. Upon examining the complainant, she found her to be 13 years old. She found no bruises in the private parts of the complainant. However, she found that her hymen was broken and had a discharge from her private parts. She then put in the P3 medical report as exhibit no. 2. In the circumstances, I find no merit in grounds 1 and 2 of appeal and are hereby dismissed.
5. In grounds 3 and 5, the appellant has faulted the trial court for convicting him when his trial was irregularly conducted and his rights violated. In this regard, I find that the appellant was accorded a fair trial. He was accorded the opportunity to cross examine the prosecution witnesses and he did so. After being put on his defence, he made an unsworn statement denying the charges and explained his alibi defence. This was fully considered and rightly rejected by the trial court. In the circumstances, I find no merit in grounds 3 and 5 of appeal and are hereby dismissed.
6. In ground 4, the appellant has faulted the trial court for convicting him on a defective charge. I find that the offence of defilement is stated in the statement of the offence as one that is contrary to section 8(1)(3) of the Sexual Offences Act No. 3 of 2006. I find that the charge should have been framed by alleging that it was contrary to section 8(1) as read with section 8 (3) of the Sexual Offences Act No. 3 of 2006. However, I find that this omission did not occasion a failure of justice in terms of section 382 of the Criminal Procedure Code (Cap 75) Laws of Kenya. In the circumstances, I find no merit in this ground and is hereby dismissed.
7. This is a first appeal court. As a first appeal court according to *Okeno v. R (1972) EA 32*, I am required to scrutinize the evidence upon which the appellant was convicted and sentenced. I have done so.

8. The appellant was sentenced to 20 years imprisonment. There is medical evidence that the complainant was found to be 13 years old. Her birth certificate shows that she was born in September 1999. In the circumstances, I find that the sentence imposed was merited and his ground of appeal is hereby dismissed for lacking in merit.

9. The upshot of the foregoing is that the appeal is hereby dismissed in its entirety.

Judgement delivered in open court this 29th day of June, 2017 in the presence of the Appellant and M/s Nyaroita for state.

J. M. Bwonwonga

Judge

29/6/2017