



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL APPEAL NO. 50 OF 2014

[Being an appeal from the judgment and sentence in Kitale Chief Magistrate Criminal Case No. 2260 of 2011 delivered on 30/4/2014 by Hon. J.A. Owiti Senior Resident Magistrate]

JARED MACHARIA KARAGUAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

J U D G M E N T

1. The appellant, **Jared Macharia Karagu**, was charged with the offence of defilement, contrary to **Section 8(1) as read with 8(2) of the Sexual Offences Act No.3 of 2006**. The particulars of the offence are that on **12th day of August, 2011**, in **Trans-Nzoia County**, intentionally caused his penis to penetrate the vagina of **DNN**, a child aged **nine (9) years**.
2. The appellant denied the offence. The case proceeded to a full trial. **PW1 MN** the complainant's mother testified. Her evidence was that the complainant was born in the **year 2001**. That on the material day she had left the complainant with a neighbour. **PW1** then went to Webuye for a funeral. **PW1** further testified that the complainant was taken to a doctor for age assessment and the appellant was later arrested and charged.
3. **DN** the complainant (**Pw2**) testified that she was home alone when the appellant went there and dragged her to a nearby maize farm. That the appellant threatened her not to raise any alarm or he would kill her then proceeded to remove her pants. That the appellant then lay on top of her and proceeded to defile her. The complainant thereafter returned home. However she was walking with difficulty and following inquiries by the mother, she explained what had happened.
4. A report was made to **PW3 Abdi Swaleh** a police reservist who arrested the appellant and escorted him to the police post at Maili Saba. The complainant was issued with a P3 form and was examined at Kitale District Hospital by a clinical officer, **PW4 Linus Ligare**. The clinical officer confirmed that the complainant had been defiled. **PW4** also assessed the complainant's age as **nine (9) years**. The complainant's age was also assessed by a dentist, **PW6 Dr. Ken Ndege** as **nine (9) years**. The appellant was subsequently charged with the offence herein.
5. In his defence case the appellant gave sworn evidence and called one witness. The appellant denied the offence and stated that the complainant was defiled by her uncle. The defence witness **Christopher Nyongesa Wanyonyi** a village elder testified that it was one **Isaac** and **Ambrose** who defiled the complainant.
6. During the hearing of the appeal, the defence relied on written submissions while the prosecution

submitted orally. I have considered the said submissions.

7. There is no doubt that the complainant was defiled. The complainant's evidence on the question of defilement was corroborated by the medical evidence adduced by the clinical officer(PW4).The-doctor (PW6) assessed the complainant's age as **nine (9) years**.

8. On the issue of who defiled the complainant, the complainant's evidence is that she was defiled by the appellant. Although the complainant identified the appellant as **Jared Macharia** and described the appellant's home as near theirs, the complainant's evidence fails to state whether the offence took place during the day or during the night. This court is therefore unable to weigh whether there was any error or not in the identification.

9. Having raised questions on whether there was safe identification of the appellant, I would give him the benefit of doubt. The appeal has merit and is allowed. The appellant is at liberty unless otherwise lawfully held.

B. THURANIRA JADEN

JUDGE

Dated and **delivered** at **Kitale** this 25th day of May 2016.

B. THURANIRA JADEN

JUDGE