



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL APPEAL NO. 59 OF 2014

STEPHEN SIKUKU WANYAMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal from the original conviction and sentence of Hon. J. A. Owiti Ag. Principal

Magistrate in Criminal Case No. 1297 of 2012 delivered on 23rd May 2014 at Kitale.)

J U D G M E N T

1. This appeal arises from the judgment of the Principal Magistrate at Kitale in CM.CC.1297 of 2012, in which the appellant, **Stephen Sikuku Wanyama**, alias "**Matego**" was convicted and sentenced to twenty (20) years imprisonment on a charge of defilement, contrary to s. 8(1) read with s.8(3) of the Sexual Offences.

2. It was alleged that on the **27th May 2012** in Trans-Nzoia County, the appellant defiled **DCS**, a child aged thirteen (13) years. Alternatively, he committed an indecent act with the same child contrary to S.11(1) of the Sexual Offences Act.

After trial, the appellant was convicted and sentenced on the main count of defilement.

3. Being dissatisfied with the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds in the petition of appeal dated **26th May 2014**. He appeared in person at the hearing of the appeal and presented his written submissions which he fully relied on.

4. **Mr. Kakoi**, the learned prosecution counsel, opposed the appeal on behalf of the respondent and submitted that there were no procedural lapses and that the inconsistencies on the date of the offence as alluded by the appellant did not exist. That, the appellant was well known to the minor complainant who clearly explained to the court how she was defiled.

5. Learned prosecution counsel contended that the identification of the appellant was not an issue and that PW 6 proved that the complainant was aged thirteen (13) years.

Learned Prosecution Counsel submitted that the sentence imposed against the appellant was lawful and therefore this appeal ought to be dismissed.

6. In reply to the foregoing submissions by the respondent, the appellant reiterated that the date of the

offence was not clear and as such the witnesses were inconsistent in that regard. That, the complainant did not speak the truth.

The appellant contended that he worked for a family whose members framed him for demanding his dues.

7. Having considered the grounds in support of the appeal in the light of the submissions by both sides, it was incumbent upon this court to re-visit the evidence and draw its own conclusions while bearing in mind that the trial court had the advantage of seeing and hearing the witnesses .

In that regard, the evidence presented by the prosecution through **Ligare (PW2)**, a clinical officer at Kitale District Hospital, the complainant, **D C (PW2)**, the arresting officer, **PC William Maiyo (PW3)**, the complainant's mother, **J S (PW4)**, the investigating Officer, **PC Mary Umasi (PW5)** and **Dr. Ken Ndege (PW6)**, was dully considered by this court.

8. The evidence by the appellant in his defence was also considered. He indicated that he worked for the complainant's mother at her hotel and that he was arrested on **29th May, 2012** when strangers found him on duty and apprehended him. He was taken to Saboti Police Patrol base and placed in the cells only to be later arraigned in court. He denied the charge and contended that he was implicated by the complainant's mother who owed him his unpaid dues.

9. From all the evidence, the opinion of this court is that the ingredients of the offence of defilement were fully established by the complainant's evidence as corroborated by that of the clinical officer (PW1) and **Dr. Ndege (PW6)**. The complainant clearly indicated that she engaged in sexual intercourse against her will with a person well known to her. She actually informed the clinical officer that the person was her boyfriend. She also indicated that she engaged in the act with the same person not once but on various occasions. The medial officer (PW6) assessed her age and placed it at thirteen (13).

10. A person who engages in sexual intercourse with a child whether or not consensual would be guilty of defilement in terms of S.8(1) of the Sexual Offences Act.

There being no particular dispute that the complainant was defiled, the issue was whether the appellant was the person responsible for the offence.

The defence raised by the appellant was a denial and an indication that he was framed by the complainant's mother over his unpaid dues.

11. However, the complainant (PW2) was clear and positive that she was defiled by the appellant on more than one occasion. The two were very well known to each other as the appellant was employed at her mother's hotel. She (PW2) told her mother (PW4) that the appellant often gave her a sum of Kshs.20/= after defiling her.

The learned trial magistrate found the complainant to be a truthful witness and had no reason to implicate the appellant.

12. Other than the complainant, no other person witnessed the offence as it occurred when she was alone with the appellant. Nonetheless, her evidence could still be acted upon for a safe finding that the person responsible for defiling her was the appellant even as the evidence stood on its own so long as it was found to be credible.

A trial court is always at an advantage than an appellate court in making findings which are mostly based on the credibility of the witnesses for the simply reason that it saw and heard the witness.

13. In Criminal cases of a sexual nature the evidence of the alleged victim may be relied upon to convict a suspect even without independent corroboration if a court is satisfied for good reasons that the alleged victim told the truth (*see, S.124 of the Evidence Act.*)

Herein, the Learned trial magistrate was satisfied that the complainant (PW2) told the truth and went ahead to convict the appellant.

14. This court is also satisfied that the charge was proved against the appellant thereby rendering his grounds of appeal unsustainable. His defence was clearly discredited by the prosecution evidence particularly from the complainant showing that he was the person responsible for defiling her. His conviction by the trial court was proper and is hereby affirmed. The sentence meted out by the trial court was in accordance with S.8(3) of the Sexual Offences Act and therefore lawful.

Consequently, this appeal is dismissed for want of merit.

J. R. KARANJA

JUDGE

[Delivered & Signed this 28th day of July 2015.]