



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.24 OF 2014**

**K R O .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**FINAL ORDER**

Upon ordering that the DNA be undertaken of the child and the mother together with the appellant it has since emerged from the appellant as well as from the father and mother of the minor (complainant) that the child apparently died immediately after birth and therefore it was not possible to undertake any DNA. The evidence on record as earlier alluded clearly points to the pregnancy of the complainant. The medical evidence produced by PW7 – **Immaculate Ojwang** attest to this.

The sworn evidence by the appellant did not deny the fact or oust the evidence of the complainant. The said complainant gave graphic details of the time and occasion they had sexual intercourse with the appellant including 22/2/13 and how the appellant would pick her from her house and spend time in his place.

In his defence the appellant interalia stated that:

**“PW1 testified that she was forced to give evidence.**

**PW6 told court that PW1 was defiled by someone unknown to her thats all.”**

From the available testimonies of both PW1 and PW6, there is nothing to suggest that the complainant was forced to testify against the appellant. Neither did PW6 say that PW1 was defiled by someone unknown to her.

In the final analyses I find that this is a case where Section 124 of the Evidence Act Chapter 80 Laws of Kenya applies. The same states as follows:

**“Notwithstanding the provision of Section 19 of the Oath and Statutory Declaration Act where the evidence of alleged victim admitted in accordance with that Section on behalf of the prosecution in proceedings against any person for an offence the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him.**

**Provided that in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence the court shall receive the evidence of the alleged victim and proceed to convict the accused person, if for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.”**

I find the evidence of the minor truthful although her evidence of sexual intercourse was not witnessed as she clearly stated, I find the same consistent. It was unfortunate that the baby died thereafter and the earlier order of DNA analysis could not be undertaken.

Consequently I find the appeal unmeritorious and I shall proceed to dismiss it.

**Date, signed and delivered this 21st day of September, 2015.**

**H. K. CHEMITEI**

**J U D G E**