



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 44 OF 2012.

JEREMIAH EKENO ::: APPELLANT.

VERSUS

REPUBLIC ::: RESPONDENT.

(Being an appeal from the original conviction and sentence of H.O. Barasa – SRM in Criminal Case No. 54 of 2011 delivered on 22nd February, 2012 at Lodwar.)

J U D G M E N T.

The appellant, **Jeremiah Ekeno**, appeared before the Senior Resident Magistrate at Lodwar, charged with defilement contrary to section 8 (1) read with section 82 (2) of the Sexual Offences Act, in that on the 23rd January, 2011 at *(particulars withheld)*, Loima District, Turkana County, caused his genital organ to penetrate the genital organ of F.L, a child aged seven (7) years.

Alternatively, the appellant was charged with committing an indecent act with a child contrary to section 11 (1) of the Sexual Offences Act.

After a full trial, the appellant was convicted on the main count and sentenced to life imprisonment.

However, being dissatisfied with the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds in the petition of appeal and presented written submissions in support of his case.

The learned prosecution counsel, **Mr. Kimanzi**, opposed the appeal on behalf of the state respondent.

In his oral submissions, the learned prosecution counsel relied on the prosecution evidence on record and stated that the fact of defilement was confirmed by the clinical officer (PW1), the complainant (PW2) and the mother of the complainant (PW3). That, the complainant knew the appellant as a neighbour therefore making his identification clear. That, PW3 and PW4 confirmed that the complainant was aged seven (7) at the material time.

The learned prosecution counsel contended that the appellant was properly convicted and therefore, this appeal ought to be dismissed.

Having considered the submissions by both sides, it is the duty of this court to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

Briefly, the prosecution case was that the complainant, **F.L (PW2)**, was at the material time aged seven

(7) years and a primary school pupil at (*particulars withheld*) Primary School. She was on the material date at about 2.00 p.m. left at home by her mother, **L.A.L (PW3)**, and as she prepared a meal of beans outside the house, the appellant arrived and attempted to break into her mother's house. She resisted and screamed. The appellant reacted by slapping and eventually defiling her. He went away thereafter. Her mother found her sleeping on a mat and crying. The mother noted some blood stains on the mat and on examining her realized that he had been defiled. The mother reported the incident to the police and took her to hospital where she was examined by clinical officer, **Sammy Lorot (PW1)**, who confirmed that she had been defiled and completed the necessary P3 form to that effect. The examination also revealed that she (complainant) had a sexually transmitted infection.

P.C. Bernard Langat (PW4), arrested the appellant after he was informed that he had defiled the complainant while **P.C. Paul Munguti (PW5)**, was among the police officers who investigated the case. In the process, he presented the complainant at the Lodwar District hospital for age-assessment which was conducted by a dental officer, **Gabriel Mark Momanyi PW6)**, who assessed the age of the complainant to be seven (7) years and produced the necessary report.

After necessary investigations, the appellant was charged with the present offence. He denied the charge and his defence was that he travelled home from school on 3rd January, 2011. Later, he met two police reservists from Lorugum. They arrested him. He was taken to a chief and informed that he had defiled a girl. The chief investigated the case and released him on 5th January, 2011 but on the following day, he was arrested and taken to Lodwar Police Station and thereafter arraigned in court.

From all the foregoing evidence, it is notable that the fact that the complainant was defiled on the material date and time was not disputed and was indeed established by the evidence adduced by the complainant (PW2), her mother (PW3) and the clinical officer (PW1).

Also not disputed was the age of the complainant which was placed at seven (7) years by the dental officer (PW6).

By and large, the issue that arose for determination before the trial court was whether the appellant was the person responsible for defiling the complainant. His defence was a denial and an indication that he was arrested and charged without good cause. However, there was credible evidence from the complainant that he was the person who defiled her. She clearly narrated to the court the circumstances under which the offence occurred. He was well known to her and her mother. He was not a stranger and was in fact a neighbour to the complainant and her family. The possibility that he was mistakenly identified could not have arisen and more so, considering that the offence occurred in broad daylight. There was nothing in the evidence which raised suspicion that the appellant was implicated by the complainant without good cause. Her evidence was therefore believable so that it left no doubt in the mind of the trial court and indeed this court that the appellant was the person responsible for the offence. Consequently, the appellant's conviction was sound and proper and the sentence meted out by the trial court was lawful. The appeal is thus dismissed.

[Delivered and signed this 21st day of January, 2014.]

J.R. KARANJA.

JUDGE.