



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL APPEAL NO. 1 OF 2013.**

**DOMINIC KIPKETER CHEMANGARE ::::::::::::::: APPELLANT.**

**VERSUS**

**REPUBLIC ::::::::::::::: RESPONDENT.**

*(Being an appeal from the original conviction and sentence of J.A. Owiti– AG. PM in Criminal Case No. 1447 of 2013 delivered on 21st December, 2012 at Kitale.)*

**J U D G M E N T.**

The appellant, **Dominic Kipketer Chemangare**, appeared before the Principal Magistrate at Kitale charged with defilement, contrary to section 8 (1) read with section 8 (3) of the Sexual Offences Act, in that on the 14th June, 2012, at (*particulars withheld*) Trans Nzoia County, he defiled D.N, a child aged fifteen (15) years. There was an alternative count of indecent act with the same child contrary to section 11 (1) of the Sexual Offences Act.

After trial, the appellant was convicted on the main count and sentenced to serve twenty (20) years imprisonment. He was however, dissatisfied with the conviction and sentence and preferred to present appeal on the basis of the grounds in his petition of appeal filed herein on 2nd January, 2013. He appeared in person at the hearing of the appeal and relied on his written submissions in support of his case.

**M/s. Limo**, the Learned Prosecution Counsel, appeared for the state/respondent and opposed the appeal by submitting that the appellant was rightly convicted for sodomy. That, the complainant (PW1) gave a candid history leading to the offence and was at the time aged fifteen (15) years. That, his evidence was corroborated by that of the doctor (PW4) and that the defence by the appellant could not shatter the prosecution case was found by the trial court not to be credible.

The Learned Prosecution Counsel contended that the sentence imposed by the trial court was lawful.

Having considered the grounds of appeal in the light of the submissions made by both sides, the duty of this court is to re-consider the evidence and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing all the witnesses.

In that regard, this court has re-visited the evidence adduced against the appellant by six (6) prosecution witnesses including the complainant, **Dominic Nyabwari (PW1)**, an administration police officer, **P.C. Robert Ogongo (PW2)**, the complainant's father, **Ambrose Ogwari Nyangau (PW3)**, a clinical officer, **Ligare (PW4)**, a dentist, **Dr. Ken Ndege (PW5)**, and the investigating officer, **P.C. Caleb Yator (PW6)**.

The defence raised by the appellant has also been considered.

The opinion of this court is that there was sufficient evidence from the complainant (PW1) and the clinical officer (PW4) establishing that the complainant was defiled by being sodomised. Indeed, the fact was not disputed and was reported to the A.P. (PW2) and the complainant's father (PW3) a few hours after its occurrence. It was after that reporting that the complainant was taken for medical examination and found to have been sodomized. He was also examined by Dr. Ndege (PW5) who assessed his age as fifteen (15) years.

After investigating the case, P.C. Yator (PW6) preferred the present charge against the appellant.

Basically, the issue which presented itself for determination was whether the complainant was defiled by the appellant.

The defence raised by the appellant was a denial and an indication that he was arrested and charged without good cause. However, in his evidence, the complainant (PW1) was categorical that he was defiled by the appellant whom he had previously known. He (complainant) narrated the circumstances under which he proceeded to the appellant's house and slept there during which time he was forcefully and threateningly sodomized by the appellant.

The learned trial magistrate, believed the complainant and found that his evidence was credible. This court does not see any reason to interfere with that finding as the learned trial magistrate was in a better position to determine the credibility of the witnesses as opposed to this court which must therefore find that the complainant was indeed defiled by the appellant whose defence was thus rendered worthless.

The appellant's conviction by the learned trial magistrate was proper and the sentence imposed upon him lawful.

In sum, this appeal is devoid of merit and is hereby dismissed.

**[Delivered and signed this 18th day of March, 2014.]**

**J.R. KARANJA.**

**JUDGE.**