



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

**CRIMINAL APPEAL NO. 98 OF 2013.**

**ELIUD NAIBEI CHESIRO ::: APPELLANT.**

**VERSUS**

**REPUBLIC ::: RESPONDENT.**

*(Being an appeal from the original conviction and sentence of J.A. Owiti – AG. PM. in Criminal Case No. 1156 of 2012 delivered on 8th August, 2013 at Kitale.*

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

The appellant, **Eliud Naibei Chesiro alias Eli**, appeared before the Principal Magistrate at Kitale charged with two counts of defilement contrary to section 8 (1) read with section 8 (3) of the Sexual Offences Act, in that on the 28th December, 2011 and 8th May, 2012, in Trans Nzoia County, he defiled, S L C, a child aged fifteen (15) years.

After a full trial, the appellant was convicted and sentenced to serve twenty (20) years imprisonment on count two. He was acquitted on count one.

Being dissatisfied with the conviction and sentence, he filed the present appeal on the basis of the grounds contained in the petition of appeal filed herein on 30th August, 2013 as amended on 27th December, 2013.

At the hearing of the appeal, the appellant appeared in person and presented his written submissions which he relied on in support of the appeal.

The Learned prosecution counsel, **M/s. Kiigi**, appearing for the state respondent opposed the appeal by submitting that the evidence against the appellant was sufficient. That, he was found to have defiled a fifteen (15) year old child.

The learned prosecution counsel, contended that the sentence was lawful and urged this court to dismiss the appeal.

The appeal has been given due consideration by this court on the basis of the supporting grounds and the submissions by both sides. The duty of this court was 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.

In that regard, the court considered the evidence by the prosecution as led by the complainant **SL (PW1)**, the complainant's uncle, **M N T (PW2)**, the complainant's mother, **AN (PW3)**, a clinical officer, **Linus Ligare (PW4)**, a police officer, **P.C. William Andai (PW5)**, and a dentist, **Dr. Ken Ndege (PW6)**.

The evidence by the appellant by way of his defence was also considered.

It is the opinion of this court that the evidence revealed without any particular dispute that the complainant (PW1) was a willing victim of defilement. Her evidence indicated that she may have consented to the unlawful sexual acts committed against her. However, consent is immaterial in cases of defilement which is defined as an act which causes penetration with a child.

Penetration, under the Sexual Offences Act, means the partial or complete insertion of the genital organs of a person into the genital organs of another person.

The complainant's evidence as corroborated by that of the clinical officer (PW4) confirmed that she was defiled. Her uncle (PW2) and her mother (PW3) had long suspected that she was engaging in pre-mature sexual relationship with a man. The doctor (PW6) confirmed that she was a child aged fifteen (15) years.

The man suspected to have been engaging in sexual intercourse with the complainant was the appellant. The complainant confirmed as much and indicated that she on two occasions engaged in sexual acts with the appellant. She told the clinical officer (PW4) and the police officer (PW5) that the appellant was her boyfriend.

Although the appellant denied the offence, the evidence against him was strong and credible enough to indicate otherwise. He knew and had met the complainant who was a school going young girl at the time. In the process, they developed a relationship which led to sexual acts as stated by the complainant. He could not therefore be heard to deny the offence. He ought to have known better than engage in sexual relationship with a minor. His conviction by the trial magistrate was sound and is hereby upheld. The sentence imposed upon him was lawful.

In the end result, this appeal is dismissed.

**[Delivered and signed this 6th day of August, 2014.]**

**J.R. KARANJA.**

**JUDGE.**