



**REPUBLIC OF KENYA.**

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

**CRIMINAL APPEAL NO. 14 OF 2013.**

**MARTIN WEKESA HALAGAI ::: APPELLANT.**

**VERSUS**

**REPUBLIC ::: RESPONDENT.**

*(Being an appeal from the original conviction and sentence of E.A. Obina – SRM in Criminal Case No. 2179 of 2011 delivered on 4th February, 2013 at Kitale.)*

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

The appellant, **Martin Wekesa Halagai**, was charged before the Senior Resident Magistrate at Kitale with defilement, contrary to section 8 (1) read with section 8 (2) of the Sexual Offences Act, in that on the 14th September, 2011 in Trans Nzoia County, defiled **D N S**, a child aged eight (8) years.

After trial, the appellant was convicted and sentenced to life imprisonment.

Being dissatisfied with the conviction and sentence, the appellant filed the present appeal on the basis of the grounds in his petition of appeal filed herein on 13th February, 2013. He appeared in person at the hearing of the appeal and presented written submissions in support of the appeal.

The learned prosecution counsel, **M/s. Limo**, opposed the appeal on behalf of the state/respondent by relying on the trial court's record and contending that the appellant defiled a ten (10) year old girl and that the sentence imposed upon him was proper and lawful.

Having considered the appeal in the light of the submissions by both the appellant and the respondent, 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, this court has considered the evidence led by the prosecution through the complainant **DNS (PW1)**, a guard/pastor, Alex Baraza Katila (PW2), a herdsman, **Martin Shikuku (PW3)**, a clinical officer, **John Kiptanui Kona (PW4)**, the investigations officer, **P.C. Martin Munene (PW6)**, and a doctor, **Dr. Ken Ndege (PW7)**.

Martin Shikuku (PW3) also testified as PW5 due to an oversight on the part of the prosecution and the trial court.

The evidence adduced by the appellant by way of his defence was also given consideration by this court.

In the opinion of this court, the evidence did not raise any dispute with regard to the fact that the complainant (PW1) was indeed defiled and was at the time aged between eight (8) and ten (10) years.

The complainant's evidence as supported by the clinical officer (PW4) and the doctor (PW7) established that she was indeed defiled at a time that she was below the age of eleven (11) years. The basic issue for determination was whether the appellant was the person responsible for defiling the complainant. His defence was a denial and an indication that he was an innocent cobbler at Kiminini trading centre who was arrested and implicated with sexually assaulting a girl he did not even know. He did not know why he was framed yet he held no grudge with any person.

However, evidence by the complainant (PW1) indicated that the appellant was well known to her. She knew that he was a cobbler by occupation and that his name was Wekesa. She said that she took a pair of shoes to him to repair. He was at the time standing outside a house. He pulled her into a nearby maize plantation, removed her panties, forced her onto the ground and defiled her. She felt pain thereafter and was rescued by a pastor. The pastor (PW2) also knew the appellant. He saw him pulling up his trousers and in a state of panic. He (appellant) wanted to flee but was held by the pastor who was assisted by the herdsman cum farmer (PW3).

The herdsman also knew the appellant. Both him and the pastor realized that the appellant had defiled the complainant who was already crying. They (PW2) and (PW3) handed over the appellant to law enforcers while the child was taken to hospital.

The incident occurred in broad daylight. It was therefore possible for the appellant to be identified without difficulty.

Besides, he was apprehended right at the scene immediately after defiling the complainant. His defence was effectively rebutted and could not therefore be taken as the truth. His arrest and arrangement was not without good reason. The evidence against him was indeed watertight. Hence, his conviction and sentence by the learned trial magistrate was proper and lawful.

This appeal lacks merit and is hereby dismissed.

**[Delivered and signed this 5th day of August, 2014.]**

**J.R. KARANJA.**

**JUDGE.**