



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 18 OF 2014

MOSES EKIDOR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

***[Being an appeal from the original conviction and sentence of W. WACHIRA AG.PM at
Lodwar on the 7th day of February, 2014 in Criminal Case No. 356 of 2013]***

J U D G M E N T

The appellant, **Moses Ekidor**, was charged with defilement, contrary to section 8 (1) read with section 8 (3) of the Sexual Offences Act in that on the 2nd May, 2013 in Turkana Central, defiled A L, a child aged thirteen (13) years. There was an alternative count of committing an indecent act with the said child contrary to section 11 (1) of the Sexual Offences Act.

After trial before the Principal Magistrate at Lodwar, the appellant was convicted on the main charge and sentenced to serve twenty (20) years imprisonment. He was however, aggrieved by the outcome and preferred the present appeal on the basis of the grounds in the petition of Appeal dated 14th February, 2014.

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

The learned prosecution counsel, **Mr Gikunda**, appeared for the State/Respondent and opposed the appeal by submitting that there was proper investigations conducted by PW5 who testified before the trial court. That, the charge was read over and explained to the appellant in Turkana language which he understood. That, PW2 did actually testify on 3rd June, 2013.

The learned prosecution counsel contended that the appeal is unmerited and called for its dismissal.

This court has considered the appeal in the light of the supporting grounds and the submissions by both sides.

The evidence adduced before the trial court has also been considered by this court while noting that the trial court had the advantage of seeing and hearing the witnesses.

With regard to the act of defilement, no dispute arose with regard to the fact that the complainant, **A L (PW1)**, aged about 13 years at the material time was sexually assaulted against the order of nature after he had been found sleeping on the side of the road near a mosque and pulled into a

bush near a stadium where the incident occurred. He later reported to his mother who reported to the police.

A clinical officer at Lodwar District Hospital, **Ben Kemboi (PW4)**, examined the complainant, and confirmed that he had been sodomized.

With regard to the identification of the offender, there was sufficient and credible evidence from the complainant that the appellant was responsible for the offence. He was previously known to the complainant whose evidence on identification was corroborated by E E (PW2), and E L (PW3), who also knew the appellant and saw him taking away the complainant towards the nearby stadium.

The appellant's defence was a denial but the investigations carried out by P.C Afi Mohammed (PW5), coupled with the evidence of the complainant and his colleagues (PW2 & PW3) left no doubt that indeed the appellant was responsible for the offence. His conviction by the learned trial magistrate was therefore proper and is hereby upheld.

The sentence meted out against the appellant was also proper and lawful.

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

J. R. KARANJA

JUDGE

22/10/2014

[Delivered & Signed this 22nd day of October, 2014]