



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Criminal Appeal 46 of 2009**

**WELDON KIPLANGAT CHERUIYOT.....APPELLANT**

**-VERSUS-**

**REPUBLIC....RESPONDENT**

**JUDGMENT**

1.This is an appeal by the appellant, Weldon Kiplangat Cheruiyot, against the conviction and sentence of the Senior Principal Magistrate’s Court Kericho passed on 31<sup>st</sup> July 2009. The appellant was convicted of the offence of defilement of a child and was sentenced to 30 years imprisonment, a sentence the trial court described as deterrent in the light of the offence being common within the court’s jurisdiction.

2.The appeal is based on the grounds that:

1) The appellant was tried in Kericho Law Courts when the alleged crime was committed in Molo where there is a police station and a court of competent jurisdiction.

2) The prosecution did not prove its case beyond reasonable doubt as the appellant was not taken to hospital alongside the complainant.

3) The appellant was arrested by a private person who never surrendered him to the nearest police station but instead held him hostage overnight.

4) The evidence of PW1, 2, 3 and 4 to the offence was not corroborative of each other.

5) The sentence imposed was harsh.

3.At the oral hearing of the appeal, the appellant appeared in person. The State was represented by Mr.

Rogoncho, a State Counsel.

4. Before the appellant canvassed his appeal, the State applied to the court to caution the appellant that it would be applying for enhancement of the sentence. The court duly warned the appellant who nevertheless chose to proceed with the appeal.

5. In his oral canvassing of the appeal, the appellant stated that he wished to reply on the grounds he had filed.

6. For the State/Respondent, Mr. Rogoncho submitted that the conviction was proper as the evidence of the prosecution corroborated each other. He applied to court for enhancement of the sentence to life imprisonment as the sentence passed on the Appellant was very lenient.

7. I have considered the grounds of appeal as well as the reply by the State/Respondent.

8. With regard to the ground that the Appellant ought to have been tried in Molo where the offence was committed, Section 67 of the Criminal Procedure Code which the Appellant relies upon only applies where a person accused of an offence escapes the province or district where the offence was committed. In the present case, the offence took place in Koraboriet farm in Kuresoi within Molo District of Rift Valley Province. The Appellant was tried at Kericho Senior Principal Magistrate's court which is within Rift Valley Province. The Appellant was therefore tried within the province where the crime was committed. In any event, Section 66 of the Criminal Procedure Code gives every court authority to cause to be brought before it a person who is within the local limits of its jurisdiction and is charged with an offence committed within Kenya and to deal with the accused person according to its jurisdiction. Further, the Appellant did not demonstrate to this court what prejudice he suffered by being tried in Kericho as opposed to Molo. This ground of appeal fails.

9. On the ground that the evidence of PW1, 2, 3, and 4 did not corroborate each other, I have perused the record of appeal and read the evidence tendered by the said prosecution witnesses. I have been unable to decipher any inconsistencies in the said evidence. If anything, the evidence decisively proved that the Appellant did indeed commit the offence of defilement. This ground fails as well.

10. The other ground of appeal is that the prosecution did not prove its case beyond reasonable doubt. To succeed under this ground, the Appellant was enjoined to show what loopholes existed in the prosecution case. This he did not do. The ground would therefore not hold merely by the allegation that the case was not proved beyond reasonable doubt when indeed the trial court considered both the prosecution evidence and that of the defence and, having weighed the two established that the prosecution case carried the day. Again, this ground fails.

11. With regard to the ground that the sentence passed was harsh, Section 8(1)(2) of the Sexual Offences

Act No. 3 of 2006 provides that any person who commits an offence of defilement with a child aged 11 years or less shall upon conviction be sentenced to imprisonment for life. In the present case, the Appellant was convicted of the offence of defilement of a child aged 3 years. The proper sentence that the law prescribes for such an offence is imprisonment for life. The trial court passed a sentence of 30 years against the Appellant, which sentence in my view does not accord with the punishment prescribed by law for the offence of defilement of a child aged 11 years and below.

12. For the above reasons, the appeal fails and is hereby dismissed. In addition, the sentence passed by the trial court of 30 years imprisonment is hereby enhanced to a sentence of life imprisonment as prescribed by law.

13. The Appellant is accorded right of appeal of 14 days.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 21<sup>st</sup> DAY FEBRUARY 2013.**

**J.M. MUTAVA  
JUDGE**