



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL APPEAL NO. 77 OF 2012**

**(Being an Appeal Against the Original Conviction and Sentence by the Honourable V. Karanja,  
Resident Magistrate at Bomet in Criminal Case No. 8 of 2012 in the Judgment Delivered on  
6.11.2012)**

**E K C.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya Thursday 24<sup>th</sup> October, 2013)**

**JUDGMENT**

The appellant is E K C. He was charged with the offence of incest by male person contrary to section 20(1) of the Sexual Offences Act No. 3 of 2006. In alternative, he was charged with the offence of indecent acts with a child contrary to section 11(1) of the Act. The appellant is the father of the complainant, a girl of 5 years at the time of the offence. He was convicted as charged in the main count and sentenced to life imprisonment.

The appellant has appealed against the conviction and sentence. Counsel for the appellant Ms. Chepkurui submitted that the prosecution evidence was inadequate to sustain the conviction and sentence by the trial court. She submitted that the point in time that PW1 was taken to hospital was not disclosed, the height of the window through which PW2 peeped and saw the appellant allegedly committing the offence was not disclosed, the time the report was made to police was not disclosed, appellant was not given chance to cross-examine PW1, and the apology made before trial court by appellant was about his violence to the wife and not about the offence.

The respondent's counsel submitted that from the trial court's record it was clear that PW1 gave unsworn evidence and all the other prosecution witnesses confirmed that the appellant committed the offence. The delays in making a report to hospital were immaterial and it was submitted for the respondent that what was material was that the medical examination had established that the hymen was not intact. The respondent submitted that the prosecution had established the case beyond any reasonable doubt; the conviction and sentence should be upheld.

This court has considered the submissions made for the parties and examined the record and judgment by the honourable trial court. The evidence by PW1, PW2 and PW4 confirmed that the appellant committed the offence and the clinical officer PW3 confirmed that the hymen was not intact. I have considered the troubling and strong pressure the complainant PW1 and her mother PW2 underwent not to report the offence. I have particularly considered the probation report on record which shows that the complainant and her mother had been taken through threats not to report the offence. In the circumstances, this court finds that any time lapses in making the police reports and appearing for medical examination were well understood. The court has considered that the appellant apologised in view of the court record and the probation officer's report on record. The court finds that beyond any reasonable doubt, the appellant

committed the offence as charged.

Accordingly, the appeal is dismissed, the conviction is upheld and the appellant shall serve life imprisonment as sentenced by the honourable trial court.

**Signed, dated and delivered in court at Kericho this Thursday, 24<sup>th</sup> October, 2013.**

**BYRAM ONGAYA**

**JUDGE**