



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 87 OF 2012

(Being an Appeal Against the Original Conviction and Sentence by the Honourable V. Karanja, Acting Senior Resident Magistrate at Bomet in Criminal Case No. 16 of 2012 in the Judgment Delivered on 7.12.2012)

FRANKLINE KIBET.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Before Hon. Justice Byram Ongaya Thursday 24th October, 2013)

JUDGMENT

The appellant is Frankline Kibet. He was charged with the offence of gang defilement contrary to Section 10 of the Sexual Offences Act No. 3 of 2006 and in alternative the second count of committing an indecent act with a child contrary to section 11(1) of the Act. He was convicted as charged in the first count and sentenced to 15 years imprisonment.

The appellant has appealed against the conviction and sentence. His grounds of appeal include that:

- a. evidence before the trial court was inconsistent and contradictory;
- b. his identification was not free from errors;
- c. there was no evidence of defilement and the conviction was therefore not sustainable;
- d. the sentence of 15 years imprisonment was excessive and harsh; and
- e. the defence evidence was not considered.

The appellant submitted that he was not subjected to medical examination to determine his involvement in the alleged defilement and his evidence of alibi was not considered. The investigation officer did not visit the scene of the offence and the appellant submitted that such failure meant that the investigation did not confirm disturbance of the scene to support the occurrence of the crime as alleged. Finally, the appellant submitted that PW1 did not provide documentary evidence to show that she was a class 8 pupil at [particulars withheld] Primary School.

The learned state counsel Ms. Magoma opposed the appeal on behalf of the respondent. She made the following submissions:

- a. The issue of identification did not come about because the appellant was known to the complainant PW1 because they were neighbours and attended the same school.
- b. The appellant had not established any inconsistencies in the prosecution evidence.
- c. The minimum sentence being 15 years imprisonment, the sentence was not harsh or excessive.

d. PW2 corroborated PW1's evidence and there was adequate evidence to convict the appellant as charged.

This court has considered the submissions made for the parties and examined the record and judgment by the honourable trial court. The appellant was known to PW1 and PW2 corroborated PW1's evidence. The court finds that the submissions made for the respondent are valid.

Accordingly, the conviction and the sentence are upheld and the appeal is dismissed.

Signed, dated and delivered in court at Kericho this Thursday, 24th October, 2013.

BYRAM ONGAYA

JUDGE