

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 62 OF 2012

(Being an Appeal Against the Original Conviction and Sentence by the Honourable J. Kasam, Resident Magistrate at Sotik in Criminal Case No. 965 of 2010 in the Judgment Delivered on 5.9.2012)

DAVID KIPTANUI RONO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

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

JUDGMENT

The appellant is David Kiptanui Rono. He was charged with the offence of defilement contrary to Section 8(1) (4) of the Sexual Offences Act. He was convicted as charged and sentenced to serve life imprisonment. Counsel for the appellant Mr. Ngetich submitted that the appeal should succeed in view of discrepancies in the prosecution evidence, failure to take into account the evidence by DW2 and the appellant DW1 that the complainant's family had a standing land dispute with the appellant because they were neighbours, and the trial court failed to take into account the alibi evidence of DW2 that at the time of the alleged offence, the appellant was in fact at the market selling avocado. The State Counsel for the respondent conceded the appeal in view of the discrepancies as submitted for the appellant. It was submitted for the respondent that the evidence by PW3 was inconclusive to sustain the offence of defilement because it was not clear that the hymen had been broken or not.

This court has considered the submissions made for the parties and examined the judgment. The judgment is clear that DW2 confirmed that on the said material date, the complainant raised a false alarm and PW1's family and the appellant had a land dispute that served as a catalyst for the false alarm.

The judgment also shows that PW5's evidence did not make a conclusive finding for defilement. In view of the discrepancies in the evidence, this court finds that there was no adequate evidence to sustain the offence of defilement and therefore, the appeal is successful. Accordingly, the conviction is quashed, the sentence is set aside and the appellant is set at liberty forthwith unless otherwise lawfully held.

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

BYRAM ONGAYA

JUDGE