



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 90 OF 2012

**(Being an Appeal Against the Original Conviction and Sentence by the Honourable J. Kasam,
Acting Senior Resident Magistrate at**

Sotik in Criminal Case No. 64 of 2012 in the Judgment Delivered on 21.12.2012)

JUSTUS MOMANYI ONDIEKI ALIAS MREFU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

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

JUDGMENT

The appellant is Justus Momanyi Ondieki alias Mrefu. He was charged with the offence of defilement contrary to Section 8(1) (2) of the Sexual Offences Act No. 3 of 2006. He was convicted as charged and sentenced to life imprisonment.

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

- a. the honourable trial court failed to frame issues for determination ;
- b. there was no documentary evidence that complainant was 10years and the offence of defilement was therefore not sustainable and the age assessment report was by an unqualified person;
- c. there was no evidence of defilement and the conviction was therefore not sustainable as the prosecution evidence was riddled with contradictions; and
- d. the sentence of life imprisonment was excessive and harsh.

The appellant submitted that he pleaded for leniency if he may have committed the offence. He did not make any specific submissions to support the grounds of appeal.

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

- a. The crucial element in criminal proceedings was the establishment of the offence by the prosecution beyond any reasonable doubt and not framing of issues for determination.
- b. The appellant had not established any inconsistencies in the prosecution evidence.
- c. The age of the complainant had been established as 10 years, she was in nursery school and there was no doubt that she was a minor. The age assessment report Exhibit P 2 (d) by PW6 the clinical officer confirmed the age of PW1.
- d. PW2 corroborated PW1's evidence as per section 24 of the Evidence Act and there was adequate

- evidence to convict the appellant as charged.
- e. PW1 and PW2 confirmed that the appellant was a neighbour and known to them as Marevu also written as Mrefu in the trial court's record and there was no doubt about the appellant being known to the complainant.

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