



AMEDI OMURUNGA.....APPELLANT

VS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The appellant AMEDI OMURUNGA was charged with Defilement of a girl named MK aged 13 years, contrary to section 8 (3) of the Sexual Offences Act. He denied the charges. Upon a full trial, he was convicted and sentenced to 20 years imprisonment being the minimum punishment provided under the act.

2. He has appealed against both conviction and sentence raising four amended grounds, which basically attack the quality of evidence upon which his conviction was based. He put in written submissions in support of his grounds.

The state through MR KEMO opposed the appeal and reiterated the Prosecution`s evidence.

3. On a first appeal, this court is obligated to consider the trial evidence in order to draw its own conclusions.**(See OKENO V R 1972 EA 32)** The prosecution case in the lower court was that MK was a 13 year old girl in the material period. She was in class 4 at U Primary School. She lived with her family at M, in Malindi.

4. On 4.4.10 she accompanied her twin sister M to the Malindi cultural festival in which their mother (Pw 2) was participating. The celebrations were along the beach and there were large crowds. The twins were still at the celebrations at 7.00pm but they got separated in the crowds. As MK walked around alone, she was accosted by the appellant who pulled her to a secluded place away from the people and defiled her. Unfortunately (Pw 4 & Pw 6) police officers on patrol on the beach appeared and questioned them. The appellant proceeded to pretend to them to be MK`s father taking her home. But the girl disputed and said she had been defiled 3 times by him. He was arrested and later in the night her mother was notified. MK was treated at Malindi hospital. She had had sex before so the hymen was broken but the vaginal orifice was tender.

5. The appellant gave a sworn defence statement. He claimed that his prosecution is instigated by the committee of Kids Alive, a CBO he had founded because he decided to disband the committee for gross mismanagement. He was contacted by one of the members SWALEH ABDALLA to meet him on 4.4.10 in the evening. He left the library at 7.00Pm and proceeded towards the rendezvous the community library. He was stopped on the way by Pw 6 and other officers. With them was a juvenile. He was questioned. Pw 6 was all along receiving instructions on phone in Kikamba language. As the group moved on SWALEH and a PC MUNYAO joined up and he was taken to the police station. He was booked in the cells without explanation while the complainant was escorted to hospital. He was eventually charged. The appellant made some submissions regarding the prosecution evidence.

6. The trial magistrate in her judgement carefully considered the evidence before her and framed three pertinent issues which she answered in the affirmative upon analyzing the evidence before her. The questions are;-

a. whether Pw 1 is a girl aged 13 years.

b. whether the accused person caused his penis to penetrate into the genital organs of Pw 1.

c. whether the charges against the accused have been proved beyond reasonable doubt.

7. The learned trial magistrate unlike this court had opportunity to see and hear the witnesses testify. After conducting a fairly thorough voire dire examination she received MK`s evidence on oath. Of Pw 1`s evidence the trial magistrate observed in her judgement that *“Her testimony was not shaken during cross-examination by the accused person. She explained clearly and candid what happened on 4th April 2010”*. Clearly she was impressed with Pw 1`s evidence and believed her. I have looked at the record of Pw1`s testimony. She was questioned at length by the appellant but remained consistent on material facts.

8. The appellant was hard pressed in his testimony to explain Pw 1`s involvement in the alleged conspiracy hatched by SWALEH et al to fix him due to some disagreements. His testimony suggesting that the police officers Pw 4 and Pw 6 specifically procured Pw 1 as a complainant in order to execute the conspiracy fell flat on its face because he admitted that neither Pw 1 nor her mother(Pw 2) or the two police officers knew him before. In a half hearted way he claimed that Pw 2 was related to SWALEH his nemesis but he did not know how.

9. The learned trial magistrate despite believing Pw 1 searched for corroboration in the prosecution evidence and found it in the medical evidence which was not challenged, opportunity evidence presented through. Pw 2 and the police officers` description of the place, time and circumstances of the arrest. The trial magistrate found that the prosecution evidence was overwhelming.

10. Having considered the appellant`s defence, she noted that the persons alleged to be conspirators with SWALEH did not even know SWALEH i.e Pw 4 and Pw 6. I cannot find any reason to fault the lower court`s analysis of the evidence. Indeed having believed the evidence of Pw 1 and dismissed the defence she was entitled to convict the appellant without looking for corroboration (***See section 124 by the Evidence Act***).

11. In conclusion, this court is satisfied that the court acted on proper evidence and the conviction is safe. The appeal therefore has no merit and is accordingly dismissed. I do therefore uphold the conviction and confirm the sentence imposed.

Delivered and signed at Malindi this 19th day of June, 2012 in the presence of Mr Naulikha – State, Appellant present,c/c-Evans.

C.W.MEOLI
JUDGE