



BENARD YEGON.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

(Being an appeal from the conviction and sentence of the Senior Resident Magistrate’s Court at Kilgoris

Hon. B. Ochieng in Criminal Case No. 1014 of 2010 dated 25th March, 2011)

The appellant, **Benard Yegon** was charged with the offence of defilement contrary to section 8 (1) as read with section 8(3) **Sexual Offences Act, 2006** hereinafter the Act. The particulars of the charge were that on 1st December, 2010 at 2.00a.m. at {*particulars withheld*} in Transmara District within Narok County, he defiled the minor, one **M. C** then aged 12 years. He faced an alternative charge of indecent assault contrary to section (1) of the **Act**. He pleaded not guilty to the charges and was tried and convicted by the SRM’s court at Kilgoris. He was sentenced on 25th March, 2011 to serve 20 years imprisonment. The appellant was dissatisfied with the conviction and sentence and has appealed to this court.

In his undated petition filed on 11th April 2011, the appellant has listed grounds that he never pleaded guilty to the charge; the court did not consider his defence; and, that the key witnesses were not called. He later filed supplementary grounds to include that no exhibits were produced in court; there were no eye witnesses; the evidence was not corroborated; the age of the complainant was not established; that medical evidence did not suggest the complainant was defiled; and, that he was not taken for a DNA test.

When the appeal came up for hearing before me on 8th February, 2012 the appellant presented his written submissions. In summary, the submissions relate to the medical examination, identification and the age of the complainant; and the alibi of the appellant. The appeal was opposed by the state through the learned counsel **Mr. Mutai**. He submitted that the conviction was safe as it was based on sound evidence. In his submissions he stated that the evidence of PW1, was not corroborated by PW2, PW3 and PW4. He prayed that the appeal be dismissed.

As a first appellate court, I am under duty to subject the evidence to a fresh evaluation and arrive at an independent conclusion. This duty has been stated repeatedly since the decision in *Pandya –vs- Republic (1957) E. A 336*.

Briefly the facts of the case were that the minor complainant attended an initiation ceremony at a neighbour’s home in the company of her friends on the evening of 1st December, 2010. In the early night, the complainant and the two other girls went out of the house to answer a call of nature. The appellant together with another man accosted the girls with the appellant grabbing the complainant and taking her to his house nearby. He had sexual intercourse with her, kept her for the night and released her in the morning.

In her testimony before court, the complainant narrated how the appellant defiled her. One Paulo who was

..... court clerk

R. LAGAT-KORIR
JUDGE