



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Appeal 394 of 2010**

**I.K.K.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(An appeal from original conviction and sentence in Nyahururu criminal case No.2472 of 2010 by Hon. A.B. Mong'are, Senior. Resident Magistrate, Nyahururu dated 8<sup>th</sup> December, 2010).

**JUDGMENT**

The appellant who was tried for the offence of **incest by a female** (erroneously indicated in the charge sheet as male) contrary to **Section 20(1)** of the **Sexual Offences Act** and **deliberately transmitting sexually transmitted disease** was found guilty and convicted of the former offence and acquitted of the latter. Upon that conviction, he was sentenced to life imprisonment. He now challenges the conviction and sentence in this appeal, arguing that:

- i) the conviction was not safe as it was based on the evidence of a single witness;
- ii) the trial court did not give the appellant sufficient opportunity to ask questions;
- iii) there was no evidence that the complainant's mother found the appellant committing the offence, and;
- iv) the appellant's defence was not considered.

Learned counsel for the respondent supported both the conviction and sentence arguing that the trial court was satisfied that the complainant was truthful; that the appellant was caught in the act by his wife, the complainant's mother; the medical report confirmed penetration.

Being a first appeal, the evidence on record must be subjected to fresh analysis so as to arrive at an independent conclusion.

It was the case for the prosecution that the appellant had been defiling his daughter in the past but the proverbial straw that broke the camel's back came on 15<sup>th</sup> September, 2010 when he arrived home drunk. After eating, he called his daughter MW, aged 15 years at the time and behind the store he defiled her. The complainant's mother found the two and screamed. The matter was reported to the local chief who in turn reported to the police.

The complainant repeated to a neighbour, (P.W.3), Mama Gichuki, the area Assistant Chief, Philemon Wachira (P.W.4) and the investigating officer, P.W.6, that she had been defiled by the appellant and further that it was not the first or only time this had happened.

In his defence, the appellant denied committing the offence maintaining that he had been framed up.

The learned trial magistrate A. B. Mong'are, Senior Resident Magistrate, in her judgment found the offence proved beyond any reasonable doubt. She further found that the complainant's evidence was consistent, clear and corroborated by the evidence of the complainant's mother, that of the doctor and the appellant's own admission.

By dint of **Section 124** of the **Evidence Act**, it was sufficient for the trial magistrate to be satisfied that the child was telling the truth and that the reasons why the trial magistrate so believed be part of the record. Apart from finding that the complainant, "***clearly explained how the father has been making love to her,***" the court also found that her evidence was supported by the by testimonies of her mother, neighbour and doctor.

For my part, I have considered the entire evidence and I entertain no doubt in my mind that the appellant had engaged in acts of defilement with his 15 year-old daughter. The fact of that relationship is not in dispute. Although the manner proceedings were recorded lack flow, the complainant gave a clear account of what she had been going through over time.

The defence raised by the appellant, was duly considered. For me it has no merit and amounts to an afterthought in view of the circumstances of the case. The sentence was in line with the proviso to **Section 20(1)**.

In the result, this appeal lacks merit and is dismissed.

**Dated, Signed and Delivered at Nakuru this 7<sup>th</sup> day of November, 2012.**

**W. OUKO  
JUDGE**