



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BUNGOMA**

**CRIMINAL APPEAL NO.85 OF 2009**

***(Appeal from original BGM CM CR. NO.848 OF 2009)***

**PETER MUKANDA**

**LICHUMA.....APPELLANT**

**VRS**

**REPUBLIC.....RESPONDE**

**NT**

**JUDGMENT**

The Appellant Peter Mukanda Lichuma was convicted of the offence of defilement of a child contrary to section 8 (1) of the Sexual Offences Act and sentenced to twenty (20) years imprisonment. Being dissatisfied with the conviction and sentence he lodged this appeal.

In his petition, the Appellant states that all the ingredients of the offence were not proved. He also raises the defence that the complainant was 20 years old and capable of making a decision on what she wanted because she was not even in school. The girl was not found in the Appellant's custody and that the report to the police was made late.

The state opposed the appeal on the grounds that the age of the complainant was established as 14 years. As such the defence of the Appellant based on age was invalid. The complainant testified on how she went to visit one Hellen. Someone took her to the house of the Appellant where she was rescued by the village elder two weeks later. She had stayed with the Appellant where she was rescued by the village elder two weeks later. She had stayed with the Appellant as his wife and he had sexual intercourse with her. The Appellant did not rebut the evidence of the witnesses but only pleaded that the girl was of age.

PW1 told the court that she was beaten by her uncle and ran away from home. On reaching the home of Hellen, she spent the night there. The sister to Hellen known as Rose took her to the house of the Appellant. The Appellant stayed with PW1 for one week as his wife for all intents and purposes. The

complainant asked the Appellant to allow her to go back to school but he refused. He locked her in a house for three days. She escaped through a window and got a pastor who rescued her and called her relatives. The matter was reported to the police and accused arrested.

PW2 the uncle to PW1 testified on how PW1 ran away from home after he punished her for some wrongdoing. She stayed away for several days until she was rescued from the Appellant's confinement act. The Appellant admitted to PW2 that he had been staying with the girl.

PW4 the clinical officer produced medical evidence of sexual intercourse having taken place when he examined the girl. The hymen was mucury and had a foul smelling discharge. The age assessment report states that the girl was 14 years old.

I find that the evidence of PW1 was corroborated by medical evidence and by that of PW2 and PW4. The defence of the accused was that he had reason to believe that the girl was 17 years and ready to get married. Under section 8 (5) of the Sexual Offences Act, it is a defence to the offence of defilement if the child deceives the Appellant that she is over the age of eighteen years and that the Appellant reasonably believed that the girl was over 18 years. In the case before me, the Appellant in his defence did not say he ever inquired into the age of the child. Neither did he establish that he honestly believed that the girl was over 18 years. In his defence the accused says that the child told him she was seventeen years. A seventeen year girl is still a child and this is not a defence as stipulated under section 8 (5) of the Act.

The corroborated evidence of the witnesses was not rebutted by the Appellant. He admitted that he stayed with the girl in his house as his wife.

The magistrate said in his judgment that he found PW1 a truthful witness and that her evidence was corroborated and not challenged. The court was satisfied that the ingredients of the offence of defilement were proved. I agree with the finding of the lower court. The conviction was safe. The law provides for a sentence of not less than twenty (20) years. The sentence was therefore lawful and reasonable.

I find no merit in this appeal. I uphold the conviction and confirm the sentence. The appeal is dismissed.

**F. N. MUCHEMI**  
**JUDGE**

Judgment dated and delivered on the 28<sup>th</sup> day of September, 2011 in the presence of the Appellant and the State Counsel Mrs. Leting.

**F. N. MUCHEMI**  
**JUDGE**