REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 24 of 2008

NEWTON KARIUKI:……...……APPELLANT

VERSUS
REPUBLIC:…….……..RESPONDENT

JUDGMENT

The Appellant was convicted in Eldoret CM.CRC.NO.2824 of 2007 of the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act, Act No.3 of 2006. The particulars of the offence were that on diverse dates between 20th day of December 2006 and 6th March 2007 in Uasin Gishu District within the

Rift Valley Province he Newton Kariuki defiled a girl child aged 9 years old. He also faced an alternative charge of indecent act. He was sentenced on the main count to life imprisonment as by law provided.

He has preferred this appeal and has based the same on the grounds that the trial magistrate convicted him unjustly and sentenced him to life imprisonment when prosecution evidence was not tested and the offence was not proved beyond reasonable doubt, the trial magistrate erred in convicting on the evidence of a child of teen age, and no spermatozoa was found in the vagina of the complainant and that the P3 showed bruises around the vagina and that did not prove defilement. The Appellant filed supplementary Grounds of Appeal but without the leave of the court and these are hereby struck out under the provisions of section 350 (2) (iv) of the Criminal Procedure Code.

At the hearing of the appeal the Appellant submitted that the case was out of vendetta from one mama Anita who had been the Appellant's girlfriend with whom they had separated after a disagreement. The complainant was the Appellant's daughter who the Appellant said had run away to live with Mama Anita. He concluded his submissions by stating that he was HIV+ since 2002 and prayed that the appeal succeeds.

The state through learned state counsel Mr. Kabaka opposed the appeal on the grounds that the charge was fully proved at trial and noted that having sexual intercourse with an HIV+ positive person does not result into an automatic infection to the uninfected person and therefore the Appellant's argument that the medical examination of the complainant showed that she was HIV- is totally irrelevant.

At the trial the Appellant did not cross examine his daughter – the complainant on her evidence that the Appellant started sexually molesting her in January 2007 when her mother died. What she told the court about being sexually molested by her father then remained uncontroverted and the trial court was right in accepting that evidence. The complainant told PW2 of her ordeal at the hands of her own father. When PW2 narrated before the trial court how the complainant said she was molested by her father the Appellant herein did not

cross-examine PW2. PW3's evidence that the complainant repeated to her that she was defiled by her father also went unshaken. All that the Appellant was interested in appears to have been whether or not he had infected his daughter with the HIV virus for when the doctor gave evidence he questioned him on the HIV status of both himself and his daughter. And the doctor's answer that HIV appears after about 3 months simply silenced the Appellant as he chose not to ask any further questions. The trial court was right in rejecting the empty and bare defence of the Appellant. My evaluation and assessment of the proceedings and judgment before the trial court bring me to the same conclusion as that reached by the trial court. The Appellant was rightfully convicted and lawfully sentenced and this court finds no ground upon which it would interfere with the trial court's finding. The appeal is totally without merit and it is hereby dismissed.

DATED SIGNED AND DELIVERED AT ELDORET THIS 29TH DAY OF APRIL 2010.

P.M.MWILU
JUDGE