



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL APPEAL 211 OF 2009

JOSEPH CHESARO.....APPELLANT

=VERSUS=

REPUBLIC RESPONDENT

((Appeal from the decision of Hon. H. Nyaga ESQ. Senior Resident Magistrate delivered on 2nd December 2009 at the Senior Resident Magistrate's Court at Kabarnet in Kabarnet SRM

No. 566 of 2009 on conviction and sentence)

JUDGMENT

I. Introduction

1. The Appellant was charged in the Subordinate Court with the offence of

**Defilement Contrary to Section 8(2) of
the Sexual Offences Act.**

That on the 3rd July 2009 at S Division within the Baringo District of the Rift Valley Province unlawfully caused --- penetration of and to G.J. a female aged 7 years old.

2. An alternative charge was preferred being:

On 3rd July 2009 at S Division within Baringo District unlawfully and indecently assaulted G.J. a female aged 7 years old

3. The Appellant pleaded not guilty to the offence. A Trial was held and he was sentenced to life imprisonment.

4. Being dissatisfied with the decision, he appealed to this High Court on 10th December 2009. The appeal was admitted to hearing on 1st March 2010 (Mwilu J).

II. Petition of Appeal

5. (a) **That having pleaded not guilty he did not understand the language.**

(b) **He was sick during the proceedings**

(c) **The prosecution failed to prove their case beyond reasonable doubt.**

IV. In reply

6. The state informed the Court the Appellant admitted to the offence in his submission/defence

V. Opinion

7. The Appellant informed the Lower Court that he indeed was aged 50 years old, that he had heard the evidence, that at the time he was drunk and he prayed for forgiveness. He was a widower. This was given in a sworn statement. He stated that the devil tempted him in cross-examination.

8. From the evidence before Court the Appellant pretended to escort the minor from his house to that of her grand mother. Her mother had no objection as the minor 7 years old slept with the grand mother. It was though that the Appellant passed the grandmother's door and did not go in but instead laid the minor girl on the grass and defiled her. She screamed after the incident because he held a panga/cutlass to her before leaving her.

9. The medical and circumstantial evidence is sufficient to prove this case. In his defence the Appellant admitted to the offence. I see no reasons to interfere with the conviction.

10. As to the Sentence. The one of life imprisonment is according to law. I do not interfere in any way with it.

11. The appeal stands dismissed.

DATED THIS 5TH DAY OF JULY 2010 AT ELDORET.

M.A. ANG'AWA

JUDGE.

Advocate.

(i) Joseph Chesaro (Appellant in person) - Present

(ii) A. Oluoch instructed by the office of the Attorney General for the
Respondent/Republic- Present