



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 309 of 2008**

DANIEL MUNIU GIKUNI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of defilement contrary to Section 8 (1) (2) Sexual Offences Act with an alternative indecent assault with a child contrary to Section 11(1) of the Sexual Offences Act 2006. He was sentenced to life imprisonment.

The prosecution case is that the complainant is 13 years old. Upon conducting a short vire dire the Trial Magistrate found that she cannot be sworn. She does not understand the value of swearing PW1. As PW1 she did not swear but he identified the Appellant.

She described what the Appellant did to her after he placed her on the bed. Her mother found her in the Appellant's place and she told her what was going on. She was taken to hospital. PW2 M N on 2.7.01 took J aged 4 years to her relatives as she went to collect firewood. She went to Murius. PW2 is the one who took the child to dispensary and was given P3 Form.

The Appellant was arrested by PW3 police officer Eric Ogutu. PW4 is Dr. Caroyne Njeri Ngugi. She was Clinical Officer. She produced FW's medical report. Defence counsel did not object to admitting medical report. The vulva was bruised, the hymen was intact and reddish in appearance nothing abnormal that was detected there was no spermatozoa HIV status was negative.

The Appellant was put to his defence. He chose to give sworn evidence. He said on 27/9/2007 at 11.00 am Daniel Munui Gikuni from Githiwa was cutting cattle feed. He knew N. She is aged 4 years. He saw her at his sister's home but his sister was not there. But he returned there and complainant followed him back home. He went to milk when her mother met him at 7 pm he was on the road when his mother met him. She told him that police were looking for him. He was arrested by police officers. He was taken to court 4 days thereafter. He was examined at Health Centre. He denied having committed offence charged with.

On cross-examination he admitted they are neighbours and on that date he saw her by their gate all alone. It is true he called her to his place where he gave her some milk. The trial Magistrate after considering the evidence given by both parties he found the evidence of complainant corroborated by the mother. The mother found the complainant in the Appellant's place.

The complainant though minor gave evidence which was firm and consistent which evidence was not shaken on cross-examination. The medical evidence was confirmed by Dr. Ngunu of Githunguri Health Centre who produced P3 exhibit on behalf of Dr. Faith Mungai. It

was the opinion of the Doctor that there was sexual assault on the complainant. Although prosecution called one witness the Trial Magistrate found for prosecution on all issues raised by the Defence.

Trial Magistrate found the prosecution case proved beyond reasonable doubt. I have perused the evidence and it is my finding that the conviction was supported by evidence sufficient to prove the case beyond reasonable doubt.

Regarding sentence prescribed in the law no other sentence is set down before in the Act. I dismiss the appeal.

Dated and delivered at

Nairobi this 22/9/2010.

J. N. KHAMINWA

JUDGE