



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 42 OF 2009

LEONARD KIBET RONO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the judgment of the Senior Resident Magistrate at Bomet , Hon. T. Okello given in Bomet

SRM CR. C. NO. 342 of 2007)

JUDGMENT

The appellant, Leonard Kibet Rono, was sentenced to a jail term of 20 years on 16th July, 2009 by the Hon. T. Okello, Senior Resident Magistrate at Bomet in PMCR. Case No. 342 of 2007 following his conviction on the offence of defilement of a girl under the age of 15 years contrary to **section 8(3)** of the **Sexual offences Act, 2006**. The particulars in support of the charge were that on 15th March in the year 2007 in Bomet District within the Rift Valley Province, he had unlawful carnal knowledge of J. C, a girl aged 12 years. **Section 8(3)** of the **Sexual Offences Act 2006** stipulates;-

“8(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years”

Under the Sexual Offences Act, a person who commits an act which causes penetration which is defined as partial or complete insertion of his genital organs into the genital organs of a child (as defined by the Children’s Act) is guilty of defilement.

The appellant moved to this court by way of Petition of appeal on 30th July, 2009 and Petitioned for his conviction to be quashed and sentence set aside on the grounds set out on his Petition whose thrust was

that there was insufficient evidence before the trial court to support the charge and that the sentence was harsh. The appeal came up for hearing before me. The appellant had no legal representation. He merely adopted the grounds set out in his Petition. Mr. Kivihya, State Counsel, appeared for the State/Respondent and opposed the appeal on the ground that the evidence adduced at the trial proved the guilt of the appellant beyond any reasonable doubt.

I have perused the entire record and duly considered the evidence before the trial court and the grounds advanced by the appellant in support of his Petition of appeal. This is what emerges.

J.C, aged 12 years, was according to the record, a pupil. She knew the difference between truth and lies. She was going home alone from school at 7p.m. She told the trial court she met the appellant on the way and that the latter was a stranger to her. He grabbed her and took her to a nearby bush where he covered her mouth with his left hand while he tore her inner wear with the right hand and then sexually abused her. After the ordeal, J. C went home and told her mother, V.K, what had happened. In her evidence, V.K testified that she heard that J had been defiled by the appellant and when she asked J, the latter told her that it was true, whereupon V.K checked her and observed that her clothes were torn. She took her to Longisa hospital where she got treated and then reported the matter to the Police. George Opima PW3, a police officer at the station, issued her with a P3 form. A clinical officer at Longisa, one Mica Kiptoo Tarus, told the trial court in his testimony that the P3 form was filled in by Nicholas Rono(PW4) who had left Longisa Hospital and could not be traced to testify on the P3 form. Mica Tarus was however familiar with the handwriting and signature of Nicholas Rono and he told the court that the latter had observed in the P3 form that J's vagina had been penetrated but there were no sperms. She had swollen labia majora. She had whitish discharge but no physical tear. As the incident was reported 5 days after, no specimen was collected. The VDRL and HIV test were negative. Mica Kiptoo Tarus produced the P3 form on behalf of Nicholas Rono. The P3 form showed that the labia was injured. The trial magistrate recorded that the appellant had no objection to the production of the P3 form. He also found that PW4, Mica Kiptoo Tarus, had worked with Nicholas Rono for over four years and was conversant with his handwriting and signature.

In his defence, the appellant denied, ostensibly not under oath, that he had defiled the minor. He indicated that he had gone to Siongoi to harvest maize and when he returned home, he found people looking for him.

In his judgment the learned trial magistrate found that J.C identified the appellant as the person who defiled her. He also found that her mother, V. K, knew the appellant. He opined that the appellant did not say why people were looking for him. In doing so, he shifted the burden of proof to the Appellant. He came to the conclusion that the prosecution had proved the guilt of the appellant beyond any reasonable doubt. But did it?

Little J.C had not seen the person who defiled her before 15th March, 2007 when she was defiled. No identification Parade was ever held. When she told her mother, PW2, that she had been defiled, she gave neither a name nor a description of the defiler. It was her mother, V.K, who stated in her evidence in chief that little J.C had stated at the police station when they were being issued with a P3 form that it was Leonard who had defiled her. This was not true. This evidence by the mother was obviously false as her daughter admitted that she did not know the person who had defiled her. When J.C gave evidence in the trial court on 14th September, 2007 after a period of six months since the incident, the appellant was in the dock. She identified him in the dock. What weight can be attached to the dock identification? At no time did she attempt to describe him. It was her mother who seems to have had a fixation, rightly or wrongly, that it was Leonard, the appellant, who had defiled her daughter.

PW3, George Apima, the officer who issued the P3 form to the mother and daughter (PW2 and PW1 respectively) did not know where the appellant had been arrested or by who. He just found him at the station. PW2 did not mention the name of Leonard, the appellant, to PW3. Can the evidence of J. C be relied on? She had not seen the defiler before 15th March, 2007. It was getting dark at 7.00p.m on 15th March, 2007. She said in evidence that she told her mother that she had been defiled but her mother (PW2) told the court that she PW2 heard (from other people) that the appellant had defiled her

daughter. She did not name any of those people, and none was called to testify. According to PW2, it was she (PW2) who asked PW1 whether it was true that she had been defiled. This does not sit well with PW1's evidence in which PW1 stated that she ran home and told her mother about the stranger who had defiled her. None of the people who arrested and took the appellant to the police station was called to testify. The only evidence before the trial court was that of dock identification six months after the incident. In absence of any other evidence and in absence of any description of the defiler, and in view of the discrepancies on how the name of the appellant came to be mentioned following which he was arrested by people who never testified, it seems to me totally unsatisfactory to rely on the dock identification. The dock identification was worthless evidence which without more could not remotely implicate the appellant, let alone prove his guilt.

It is my finding that the evidence adduced fell far too short of what is required in law to establish the guilt of the appellant beyond reasonable doubt. I have no hesitation in quashing the conviction which I hereby do. I also set aside the sentence. Unless otherwise lawfully held, the appellant shall be released forthwith and set free.

DATED at **KERICHO** this 27th day of October, 2010

G.B.M. KARIUKI,sc

RESIDENT JUDGE

COUNSEL APPEARING

Mr. P. Kiprop State Counsel for the Respondent
Appellant in person