



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS**

Criminal Appeal 11 of 2008

MICHAEL MUTAVA KARANJAAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal from a Judgment of the Senior Resident Magistrates Court at Kajiado

(Hon. R.A onganyo SRM) dated 12th September 2007)

in

(SRM'S CR.C. No. 2017 of 2006)

JUDGMENT

1. The Appellant herein, Michael Mutava Karanja was charged with the offence of defilement Contrary to Section 8 (3) of the Sexual Offences Act No. 3 of 2006. It was alleged that on 26/11/2006 in Kajiado District, he had carnal knowledge of N.K. a girl aged 12 years. He denied the charge, was tried, found guilty and was sentenced to serve 20 years in prison. The appeal is against both conviction and sentence.

2. According to PW1, N.K. aforesaid, on the material day she was at home as schools had closed and the Appellant who was her parents' employee was also in the home. Her siblings, younger than her, were playing with her outside the house and at round 11.00 a.m., she entered the kitchen to pick a broom and the Appellant who was there grabbed her. Her brother's bed was in the kitchen and that is where he

allegedly defiled her. When she attempted to scream he covered her mouth with a blanket but she struggled and continued screaming as the Appellant allegedly defiled her for an hour.

3. PW2, JS, brother of PW1 was in his house when he heard screams from his mother's house and when he rushed there, he found the Appellant and PW1 in the kitchen with PW1 crying. She informed him that the Appellant had defiled her and so he rushed off to call his mother, PW2, C.K.K who was a distance away, selling vegetables. They returned home together and they found that PW1 was bleeding and PW5 made a report to the Assistant Chief, PW4, Jonathan Swakei, who went to the scene, arrested the Appellant and the next day took both he and PW1 to Kajiado Police Station.
4. PW6, P.C Damaris Riungu received the initial report at Kajiado Police Station, rearrested the Appellant, sent PW1 for medical examination, took possession of PW1's bloody undergarment and charged the Appellant.
5. PW3, Dr. Titus Ndeti examined PW1 and found that her labia majora and minora were both lacerated and her hymen was broken. She also had dried blood in her vagina and he concluded that she had penetrative sex. He also examined the Appellant who had injuries from assault occasioned by members of the public soon after the alleged incident.
6. When put on his defence, the Appellant admitted that he was an employee at PW1's home and on the material day, he had gone to burn charcoal but returned for lunch at 1.00 p.m. and then went back to do his work until 6 p.m., prepared food and slept but at night he was attacked by a mob and then he was taken to hospital and charged with defilement of PW1, which offence he denied.
7. On Appeal, his principal complaints are that the case against him had not been proved beyond reasonable doubt and that PW1's evidence had not been corroborated by the medical evidence. That his defence was not considered and further that the trial magistrate shifted the burden of proof to him.
8. I have carefully the evidence on record and in evaluating it before reaching my own decision, I should state that the Appellant was caught almost red-handed by PW5 who responded to PW1's screams and in the kitchen, PW1 was crying and said that the Appellant had defiled her. She was unable to stand and was bleeding. The appellant was just sitting there and when PW2 came he was sleeping in the same bed that he had defiled PW1 and had no answer to the claim by PW1. The evidence of PW1, PW2 and PW5 is wholly credible and corroborative. In any event, the evidence of PW1 comes out as consistent, truthful and I hardly find any reason to doubt it. Add the evidence of PW3, PW4 and PW5 and it is clear that the injuries in her labia majora and minora, the blood on her underpant (which was produced in court) and it becomes crystal clear that her claims were not made up. The complaint that her evidence is inconsistent with medical evidence tendered is misplaced.
9. It is my humble view that the case against the Appellant was proved beyond reasonable doubt and as regards his defence, he placed himself at the scene and his claim that he was in the forest burning charcoal during the day and then that he was attacked by a mob at night is fanciful, and an afterthought and cannot dislodge the evidence tendered by PW1, PW2 and PW5. I dismiss it as such.
10. I have also read the learned magistrate's judgment and nowhere has she shifted the burden of proof to the Appellant. A statement in defence must answer the charge and dislodge adverse evidence and I have said that the case made out against the Appellant was strong and credibly passed the test in criminal cases, with or without the Appellant's defence.
11. Without saying more, the Appeal is without merit and is best dismissed as I hereby do.
12. Orders accordingly.

Dated and delivered at Machakos this **18th** day of **September** 2009.

ISAAC LENAOLA

JUDGE

In presence of: Mr O'Mirera for Republic

Appellant: Present

ISAAC LENAOLA

JUDGE