



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 173 of 2005

DAVID MUGO NDERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with 2 counts of defilement with alternative count of indecent assault of a female in both counts. The victims were young children and an inquiry on ability to speak the truth was carried out. The Trial Court was of the view that the first witness could give unsworn statement. The second could give sworn statement. She stated that she knew the Appellant. She said that he slept with her in the kitchen of her grandmother. She described what appellant did to her very clearly. She further told the court that after the act she went to her home and informed her mother who took her to hospital.

PW2 was the other victim she was aged 7 and gave sworn evidence. She testified that she knew the Appellant. He was her uncle. Appellant took her to his kitchen and slept with her. She gave details of what happened then she went home informed her mother. She did not inform her mother immediately but when she told her mother that David (Appellant) had slept with her 6 different times her mother wept. Mother took her to hospital.

PW3 the mother of the little girls was informed of the events and on checking she saw the private parts swollen and dirty looking. She took the 2 girls to police station and to hospital. The doctor confirmed that PW1 was defiled. Then as they were at the hospital PW2 informed the mother that Appellant had slept with her too. Doctor examined both girls and concluded that they were defiled both hymens were broken. The appellant gave unsworn statement and alleged that he has been framed by Liney and Kanini. That these persons not described they owed him money which they do not want to pay. His witness, DW2 alleged he was with appellant the whole day working on the farm belonging to her mother. Note this is the complainants grandmother's house kitchen (which mentioned by victim). This event against PW1 occurred in the kitchen of her grandmother.

DW3 gave evidence that he was with accused with while fencing. This statement is contradictory to that of DW2. That was the evidence for appellant. He then closed his case.

I have perused the Judgment of the Trial Magistrate and I am satisfied that the same was reached after the Trial Magistrate was satisfied that the prosecution had proved the offences beyond reasonable doubt. I see no reason to interfere. Sexual offences have captured public attention and parliament has enhanced the punishment. The sentence of 15 years on each count not excessive or harsh in the circumstances. This appeal is dismissed.

Dated this 6th November, 2007.

J. N. KHAMINWA

JUDGE

6/11/2007

Khaminwa – Judge

Njue – Clerk

State Counsel Kimathi

Appellant present in person

Read in open court.

J. N. KHAMINWA

JUDGE