

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL APPEAL NO. 218 OF 2002**

(From original conviction and sentence criminal case no. 619 of 2002
of the Senior Resident Magistrate’s court at Kajiado)

KILELO OLOODO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

The appellant was charged before Senior Resident Magistrate’s court Kajiado in CRC 619/02 for an offence of defilement contrary section 145 (1) penal code. He was convicted of the offence on 24.9.2002 and sentenced to a term of 7 years imprisonment with had labour and 2 strokes of the cane. He is dissatisfied with the conviction and sentence from which he appeals.

The appellant filed 5 grounds of appeal and he did not wish to be present at the hearing of his appeal. The grounds are not very clear but what I can make of them is that appellant contends that the charge was not proved as he was never taken for medical examination and that the court took advantage of his ignorance of what was going on and that the sentence of 7 years is excessive and harsh.

The state opposed the appeal on grounds that there is sufficient medical evidence adduced by PW1 that the complainant was defiled which corroborates PW2’s evidence and hence conviction was safe and sentence is deserved.

The complainant PW2 is a girl of 8 years. After she was examined by court it was found that she understood the meaning of oath and gave her evidence on oath. The alleged defilement took place at 7.00a.m. in broad daylight. PW2 knew the assailant who was a neighbour. Her evidence was unchallenged and unshaken. It was corroborated by evidence of her mother who discovered whitish substance on her clothing, became suspicious and examined her and questioned her. PW1 later examined her only to find her hymen broken, with bruises on her private parts. PW2 never hesitated or shifted blame from one to the other but pointed at accused. The appellant had opportunity to cross examine the complainant and also gave his defence. I do find that there was sufficient cogent evidence adduced by the prosecution and there is no doubt that the Magistrate reached at the correct finding that the appellant is the person who defiled the complainant. The conviction is proper and safe.

The offence is very serious. The complainant was a child of tender age of 8 years whose childhood and innocence has been betrayed by the cruel act of the appellant. The sentence of 7 years is fair. The state counsel concedes to the sentence of hard labour and strokes which has been done already away following amendments to the law in 2003. However the amendment did not do away with hard labour. The appeal against conviction is therefore dismissed and appeal against sentence succeeds only in regard to the strokes. The upshot is the sentence of 7 years with hard labour stands.

Dated, read and delivered at Machakos this.....day of.....,2004.

R. WENDOH

JUDGE