

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 319 OF 2000

(From Original conviction and sentence in Criminal Case No. 13500 of
1999 of the SP Magistrate's Court at KIBERA).

NYEUSU LETO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant Nyeusu Leto was convicted of the offence of defilement of a girl contrary to section 145(1) of the Penal Code and sentenced to 10 years imprisonment with hard labour and to suffer 8 strokes of the cane.

Being aggrieved by the said conviction and imprisonment he lodged an appeal and set out 5 grounds.

At the hearing of the appeal, the learned counsel for the Republic conceded the same and with respect, I agree.

The basis of the conviction was the evidence of the complainant minor aged 9 years old. She gave unsworn evidence as the court found that she did not know the importance of giving sworn testimony.

The evidence aforesaid required corroboration, and the learned trial magistrate rightly said so. In the instance case however, it was the word of the complainant against that of the appellant.

There is also a material contradiction between the evidence of the complainant told the court that she reported the incident to the mother on the following day the mother said she (her daughter) told her of the incident 6 days after the event. Credibility then comes into play and considering the seriousness of the offence such evidence becomes doubtful.

The doctor who examined the accused could not say that it was him that defiled the complainant.

At the end of it all, the conviction was unsafe. One last issue. The appellant's age was placed at 17 years by Dr. Kamau. This was evidence that was presented during the trial. In a case of conviction, the learned trial magistrate ought to have referred the sentence to the High Court for confirmation. This she did not do. Be that as it may, having found that the conviction was unsafe, this appeal must be allowed.

Accordingly, conviction is quashed and sentence set aside. The appellant shall be set free forthwith unless otherwise lawfully held. Orders accordingly.

Dated and delivered at Nairobi this 20th day of March 2002.

MBOGHOLI MSAGHA

JUDGE

Mr Monda for the State

Appellant present in person.

