



REPUBLIC OF KENYA



KENYA LAW
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**Kiplangat v Republic (Criminal Appeal E027 of 2021)
[2024] KEHC 4121 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E027 OF 2021**

JR KARANJA, J

APRIL 18, 2024

BETWEEN

DUNCAN KIPLANGAT APPELLANT

AND

REPUBLIC APPELLANT

(Being an appeal against Judgment delivered on 27th October 2021 by Hon. E.W. Karani, RM in Criminal Case No. E006 of 2021 at Kericho, Chief Magistrate's Court)

JUDGMENT

1. The Appellant, Duncan Kiplangat, was charged before the Resident Magistrate at Kericho with defilement, Contrary to Section 8(7) as read with Section 8(2) of the *Sexual Offences Act*. It was alleged that on the 22nd December 2020 within Kericho County he defiled a girl described as DC aged seven (7) years old. Alternatively, the Appellant was charged with committing an indecent act with the said girl, contrary to Section 11 (1) of the Act.
2. After a full trial, the Appellant was convicted on the main count and sentenced to thirty (30) years imprisonment. He was dissatisfied and filed this appeal on grounds set out in the petition of appeal in which he faults the trial court for convicting him on the basis of the prosecution evidence which was insufficient, manufactured, manipulated, framed and inconsistent. He also complains that the trial court disregarded his defence.
The appeal was opposed by the State/ Respondent.
3. The hearing proceeded by way of written submissions which were filed by both sides. The Appellant represented himself while the Respondent was represented by the Learned Prosecution Counsel, Mr. Karanja.



The appeal together with the rival submissions were given due consideration by this court whose main role was to revisit the evidence and draw its own conclusion bearing in mind that the trial court had the opportunity of seeing and hearing the witnesses.

4. Accordingly, the evidence by the prosecution witnesses (PW1 to 4) was considered as against that of the Appellant in defence.

What emerged as the basic issue for determination was whether the child Complainant (PW1) was sexually assaulted by being defiled and if so, whether the Accused/ Appellant was responsible for the offence.

5. In terms of Section 8(1) of the Sexual Offences Act, the ingredients of defilement include an act of penetration with a child.

The prosecution was therefore expected to prove beyond reasonable doubt that an act of penetration was committed against the Complainant who was at the time a minor aged seven (7) years. Further, the prosecution was required to prove that the act was committed by the Appellant whose defence was a denial and he bore no responsibility to prove his innocence.

6. On its part the trial court concluded that the prosecution on account of the evidence presented by its witnesses succeeded in discharging its obligation in proving the ingredients of the charge against the Appellant beyond reasonable doubt. A reconsideration of the evidence by this court prevails upon it to find that the Complainant's age was undisputed and was indeed established by the clinic card (P. Ex 1) produced by the Complainant's mother (AC (PW2) to show that the Complainant was born on 20th October 2013, thereby placing her at the age of seven (7) years or thereabout as at the material time of the offence.

7. As to whether the Complainant was defiled as alleged on the material date, it is the finding of this court that there was sufficient and credible evidence from the Complainant (PW1) which showed and proved that an indecent act of penetration was committed against her. This was fortified and corroborated by medical evidence presented by the Clinical Officer, Chepngetich Faith Caroline (PW3) and on the periphery by the Complainant's mother (PW2).

8. The mother (PW2) noted that on the material date at about 10PM the Complainant appeared sick and she gave her some medication. However, on the following morning the mother noted that the Complainant was walking in an unusually way but would not reveal what had happened to her until much later when after being beaten by her mother she revealed that she had been defiled.

9. The Complainant was then examined by her mother who noted that she was bleeding and her private parts were swollen. The mother took her to a doctor who referred her to the police at Sondu Police Station where the necessary P3 form (P. EX. 3) was issued and later filled and signed by a Clinical Officer at Sigowet Sub-County Hospital called Hillary Cheruiyot.

10. The P3 form was however tendered in evidence on behalf of Hillary Cheruiyot by his colleague Chepngetich Faith (PW3). The form is essentially a medical report and it showed and established that an act of penetration was indeed committed against the child Complainant.

The Appellant did not in his defence deny that the Complainant was defiled. His contention was that he was not responsible for the offence and was implicated by the Complainant's mother (PW2) due to their pre-existing differences over some stone on her land.

11. In his sworn statement the Appellant indicated that the differences with the Complainant's mother led her to threaten him on the 18th December 2020 to the effect that she would do something to him. The



few days that followed were marked with squabbles between the two which roped in the Appellant's parents to the extent that on 21st December 2020, the Appellant's mother and the Complainant's mother engaged in a duel.

12. The Appellant also indicated that on the material 22nd December 2020, he was again threatened by the Complainant's mother to the effect that he would on that day see i.e. "Leo utaona." in the Kiswahili language. Thereafter, on the 13th January 2021 while preparing to go to school he (Appellant) was approached by the Area Chief and informed that he was required at the Chief's Office. He was tied on the hands, with a rope and taken to the office where he was questioned on his grudge with the Complainant's mother (PW2) before being taken to Sondu Police Station and charged with the present offence.
13. Despite his denial of the offence, and indication that he was implicated by the Complainant's mother maliciously and without good cause, the Complainant's evidence with regard to the person responsible for defiling her was clear and credible enough in pinpointing the Appellant as the Appellant. He was no stranger to her a fact confirmed by her mother (PW2) and not disputed by him.
14. The Complainant indicated that she could not remember the exact date but could remember that the Appellant was grazing cows at a nearby field while she was playing with her younger male siblings. In the process, the Appellant approached and without talking to her held and led her to a spot outside his house where he defiled her. Thereafter he went away. She collected herself up and proceeded to her home. She did not report the matter immediately but on the following day to her mother.
15. In effect, the Complainant's evidence disproved and shattered the Appellant's defence by placing him at the scene on the material date and showing that he was the person responsible for defiling the Complainant. His defence was not credit worthy and smacked move of an afterthought.
16. The prosecution evidence against the Appellant was in essence cogent and credible enough in establishing and proving beyond reasonable doubt the ingredients of the charge of defilement and not any other. His conviction by the trial court was therefore sound and proper and is hereby upheld with the result that his grounds of appeal in respect thereof are unsustainable.
17. On sentence, Section 8(2) of the [Sexual Offences Act](#) applied as the Complainant was aged seven (7) years or thereabout as at the material date of the offence. The Appellant was therefore entitled to life imprisonment but was given a prison term of thirty (3) years. The sentence was lawful and reasonable regard being given to the age of the child victim and circumstances of the offence.

In sum, this appeal is wanting on merit and is hereby dismissed in its entirety.

DELIVERED AND DATED THIS 18TH DAY OF APRIL 2024

J. R. KARANJAH,

JUDGE

