



REPUBLIC OF KENYA



**Kiplangat v Republic (Criminal Appeal E033 of 2022)
[2024] KEHC 5175 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E033 OF 2022
JR KARANJA, J
APRIL 18, 2024**

BETWEEN

JOSEPH KIPLANGAT APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against conviction and sentence from a judgement delivered on 4th October 2022 in Criminal Case No. E091 of 2021 by Hon. A. Ajwang, SRM at Kericho, Chief Magistrate's Court)

JUDGMENT

1. The Appellant, Joseph Kiplangat, appeared before the Senior Resident Magistrate at Kericho facing a charge of defilement, contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#). He was alleged to have defiled a child referred to as A.C. aged eight (8) years old on the 10th December 2021 at Kericho County.
2. After trial, the Appellant was convicted and sentenced to sixty (60) years imprisonment on the main count there having been an alternative count of Committing an Indecent Act with the child, contrary to Section 11(1) of the [Sexual Offences Act](#). Being dissatisfied with the conviction and sentence, the Appellant preferred this appeal on grounds set out in his petitioner of appeal in which he complains of having been convicted on the basis of the prosecution evidence which was insufficient, fabricated and uncorroborated. He also complains that the sentence meted on him by the trial court was harsh and excessive.
3. The State/ Respondent opposed the appeal which was argued by way of written submission. Both sides filed their respective submissions which were duly considered by this court.



While the Appellant represented himself at the hearing, the state was represented by the Learned Prosecution Counsel, Mr. Ogutu.

Having considered the appeal in the light of the rival submissions, the duty of this court was to reconsider the entire evidence presented before the trial court and arrive at its own conclusion. In doing so, this court is mindful that the trial court had the benefit of seeing and hearing this witnesses (see, *Okeno v. Republic* (1972) EA 32).

4. In that regard, the prosecution case was founded on the evidence adduced by the child Complainant (PW2), a Clinical Officer, Chepnetich Faith (PW1), the Complainant's aunt, RC (PW3) and the Investigations Officer, PC Julie Atieno (PW4). The defence case was a denial by the Appellant and a contention that the charge against him was fabricated.

5. The Trial Court after considering the evidence in its totality concluded that the main charge against the Appellant was proved beyond reasonable doubt.

Basically, the offence of defilement is complete if an act which causes penetration is committed against a child and if the child is aged eleven (11) years or less the Offender is eligible for a life imprisonment sentence.

6. A reconsideration of the evidence by this court reveals that the fact that the Complainant was under the age of eleven (11) years at the material time of the offence and that she was indeed defiled was not disputed by the defence and was in any event established and proved by the evidence of the Complainant. (PW2) as corroborated by that of her aunt (PW3) and the Clinical Officer (PW4) a birth certificate was produced (P. Ex 4) to confirm the age of the Complainant.

7. The Complainant indicated that she was indeed defiled on the material date. On the following date her aunt (PW3) noted that she was not walking properly and examined her private parts. She (aunt) noted some whitish discharge and took her (Complainant) to Sigowet Sub County hospital where she was examined by the Clinical Officer (PW1) who thereafter completed and signed the necessary medical report P3 form (P. EX 1) which confirmed that the Complainant was indeed defiled. That, an act of penetration into her genital organ was committed against her by a male person.

8. The prosecution having established without dispute that the Complainant was defiled, the identification of the offender remained the only issue for determination as the Appellant denied any responsibility for the offence and implied that he was maliciously implicated and arraigned in court. However, the Complainant's evidence was clear testimony that the person who defiled her was well known to her and a relative for that matter. She said that that person was none other than the Appellant who was her grandfather. She said that on the material date he called her into his house, removed his trouser and proceeded to commit an act of penetration against her. She never reported the matter to her mum because the Appellant threatened her with death.

9. The trial court heard and saw the Complainant and found that she was truthful and credible enough in pinpointing the Appellant as the person responsible for defiling her. Her evidence shattered and disproved the Appellant's defence which was thus rendered worthless in exempting him from the offence.

10. Consequently, the Appellant's conviction by the trial court was sound and proper and is hereby upheld with the result that the grounds of appeal in respect thereof are devoid of merit and unsustainable.

11. The sentence imposed upon the Appellant of sixty (60) years imprisonment was lawful and a demonstration of the trial court's leniency considering that Section 8(2) of the [Sexual Offences Act](#) provides for a mandatory sentence of imprisonment for life.



12. However, considering that the Appellant was a first offender and a fairly elderly man of about sixty five (65) years of age as indicated in his written submissions, the sixty (60) years imprisonment sentence was rather excessive and is hereby slashed to fifteen (15) years imprisonment.

Otherwise, the appeal is substantially dismissed.

DELIVERED AND DATED THIS 18TH DAY OF APRIL 2024

J. R. KARANJAH,

JUDGE

