



REPUBLIC OF KENYA



**Langat v Republic (Criminal Appeal E040 of 2019)
[2024] KEHC 4118 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E040 OF 2019
JR KARANJA, J
APRIL 18, 2024**

BETWEEN

GODWIN KIPROTICH LANGAT APPELLANT

AND

REPUBLIC REPUBLIC

(Being an appeal against conviction and sentence from a judgement dated 25th November 2019 in Criminal (S.O.) Case No. 35 of 2019 by Hon. S.M. Mokuu, CM at Kericho, Chief Magistrate's Court)

JUDGMENT

1. The Appellant, Godwin Kiprotich Langat, was charged before the Chief Magistrate at Kericho with defilement, contrary to Section 8(1) read with Section 8(3) of the *Sexual Offences Act*, in that on diverse dates between the 4th May 2019 and 7th May 2019 within Kericho County defiled SC, a girl aged fifteen (15) years.

Alternatively, the Appellant committed an indecent act with the same girl contrary to Section 11(1) of the *Sexual Offences Act*.
2. After trial, the Appellant was convicted on the Main Count and sentenced to ten (10) years imprisonment. However, being dissatisfied with the outcome the Appellant preferred this appeal on the basis of the grounds set out in the petitioner of appeal in which he complains that he was convicted by the trial court on evidence which was insufficient and uncorroborated and that the trial court disregarded his alibi defence.
3. The appeal was canvassed by way of written submissions which were duly filed by both sides. The Appellant appeared in person at the hearing of the appeal while the State/Respondent was represented by the Learned Prosecution Counsel, Mr. Ogotu. The appeal was given due consideration by the court as against the supporting grounds and the rival submissions.



4. It was the duty of this court to re-visit the evidence and arrive at its own conclusions bearing in mind that that the trial court had the benefit of seeing and hearing the witnesses.

In that regard, the evidence by the prosecution witnesses (PW1 to PW6) was considered together with the Appellant's evidence in defence.

5. What emerged as the basic issue for determination was whether the Complainant (PW1) was indeed defiled and if so, whether the Appellant was responsible for the offence.

The necessary ingredients for the offence of defilement are clearly specified in Section 8 of the [Sexual Offences Act](#) in that Under Section 8(1) of the Act, a person who commits an act which causes penetration with a child is guilty of defilement and under Section 8(3) of the [Act](#), a person who commits defilement with a child between the age of twelve (12) and fifteen (15) years is liable upon conviction to imprisonment for a term of not less than twenty years.

6. The Complainant's evidence as corroborated by that of her mother, JC, (PW3), indicated that the Complainant, was a secondary school pupil at the material time and that she left home on 3rd May 2019. Her mother indicated that she disappeared from home but she indicated that she had gone to Londiani to visit a friend.

7. The mother tendered a birth certificate (P. Ex. 1) confirming that the Complainant was born on 10th October 2003 thereby placing her age at approximately fifteen (15) years as at the material time of the offence. She (mother) reported the Complainant's disappearance to an Assistant Chief, Geoffrey Kipngetich Mitei (PW2) and the police and later learnt that the Complainant was staying with the Appellant at his house.

8. PC John Kiget (PW4) traced the Complainant to the house of the Appellant. Both were found in the house with the Complainant alleging that the Appellant was her friend and that she was pregnant. She was presented to Dr. Kirui Collins (PW5) for medical examination based on the history that she had been defiled.

The medical report (P. Ex. 3) indicated that the Complainant's genitalia had previously been penetrated and that the Complainant was sexually active even prior to the material date.

9. In her evidence, the Complainant, indicated that she engaged in sex with the Appellant when she was in his house. This evidence coupled with that of the medical officer (PW5) was credible and sufficient enough to establish the ingredient of penetration thereby implying that the Complainant was actually defiled at a time when she was a minor aged fifteen (15) years or thereabout.

10. In fact, there was no dispute that indeed the Complainant was defiled. However, the Appellant's defence implied that he was not responsible for the offence having been away from his home at the material time.

He effectively denied that the Complainant was in his house and company at the material time of the offence.

However, his alibi defence was disputed and dislodged by the prosecution through the Complainant's evidence supported by that of the Chief (PW2), the arresting officer (PW4) and on the periphery by that of the Investigations Officer, PC Lydia Awori (PW6).

11. For reasons and factors foregoing, it is the finding and holding of this court that the material ingredients of the charge were fully and credibly established and proved against the Appellant. Apparently, he ignored and disregarded that the Complainant was lawfully a child and proceeded to engage in sexual intercourse with her thereby bringing him into conflict with the law. He was at the time a young man



of about twenty (20) years but should have known better than to lower his trouser pants zip and engage in a sexual relationship with a minor.

12. Ultimately, it is the finding of this court that the Appellant, conviction by the trial court was proper and lawful and is hereby upheld with the result that the grounds of appeal in respect thereof are overruled.

In any event, the Appellant in his submissions abandoned the appeal on conviction and proceeded with it on sentence only.

13. However, the sentence imposed by the trial court of ten (10) years imprisonment was lawful. Regard being given to the provision of Section 8(3) of the Sexual Offence Act which provides for a mandatory minimal sentence of twenty years, the impugned sentence was not excessive at all, but the Appellant being a first offender and the fact that the Complainant was apparently a sexual active minor who went out of her way to tempt him to “eat the forbidden “fruit” and the fact that the Appellant has been in prison from December 2019, the sentence is hereby reduced to the term already served. Otherwise, the appeal is dismissed.

DELIVERED AND DATED THIS 18TH DAY OF APRIL 2024

**J. R. KARANJAH,
JUDGE**

