



REPUBLIC OF KENYA



KENYA LAW
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**Kinyanjui alias Tony v Republic (Criminal Appeal 149 of 2023)
[2024] KEHC 12320 (KLR) (15 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12320 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 149 OF 2023
DR KAVEDZA, J
OCTOBER 15, 2024**

BETWEEN

ANTONY NJENGA KINYANJUI ALIAS TONY APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. E Boko (SPM) on 19th January 2023 at Kibera Chief Magistrate's Court Sexual Offences Case No. 86 of 2017 Republic vs Antony Njenga Kariuki Kinyanjui alias Tony)

JUDGMENT

1. The Appellant was charged for the offence of defilement contrary to section 8(1) and 8(2) of the *Sexual Offences Act*, No 3 of 2006. The particulars of the offence are that on 8th October 2017, at Uthiru Muthua within Nairobi County, the appellant unlawfully caused his male genital organ to penetrate the anus of FT a child aged eight years.
2. The appellant pleaded not guilty and after a full trial was convicted on the charge of defilement. He was sentenced to serve fifteen (15) years' imprisonment.
3. He appeals against the sentence only in line with his undated petition of appeal and supplementary grounds of appeal.
4. The grounds raised are that his mitigation ought to be considered; he is a first offender; since his incarceration he has been rehabilitated and that he is remorseful. He urged the court to allow his appeal against sentence.
5. I have considered the appeal, the grounds raised and the written submission on record.



6. In summary, the prosecution's case was that FK, the complainant, recounted explained that the appellant, a neighbour he knew, invited him over for tea one fateful evening. Once inside the appellant's house, things took a horrifying turn. The appellant defiled FK throughout the night, subjecting him to excruciating abuse.
7. When morning came, instead of releasing the complainant, the appellant abandoned him in a nearby forest. Before leaving, he threatened FK with death if he ever dared to speak about what had happened. Terrified and in pain, FK found his way back home. Desperate for help, he told his mother about the ordeal, who immediately rushed him to the hospital for medical care.
8. At home, F.K's father (PW2) noticed his son's discomfort and asked him what had happened. With great difficulty, the complainant recounted the horrifying events of the night. Shocked and devastated, his parents quickly took him to the hospital for examination and later reported the matter to the police.
9. Dr. John Njuguna, evidence was that the complainant had cracks, dryness, and redness around the anal orifice, all clear signs of recent penetration. The doctor's report provided critical evidence that corroborated the complainant evidence on defilement.
10. In his defense, the appellant denied any wrongdoing. He insisted that the accusations were part of a malicious scheme orchestrated by the complainant's parents due to a long-standing land dispute between their families. He claimed he wasn't even present in the area at the time of the incident. To support his story, three witnesses Lucy Wanjiku, John Ngachia Kariuki, and Evaline Wambui testified on his behalf, maintaining that the appellant was being framed.
11. Despite these denials, the prosecution's case rested on the consistency of the complainant's testimony, the action taken by his parents, and the corroborating medical evidence, which painted a clear picture of abuse and trauma.
12. On the age of PW1, the trial court considered the evidence of PW1, the medical evidence (P3 form, PRC form and medical) which all indicated that the complainant was 11 years. In addition, the trial court considered the complainant and noted that he could not be above the age of 11 years. The evidence on age was not disputed. My opinion is guided by the decision the Ugandan Court of Appeal in the case of *Francis Omuroni v Uganda*, Criminal Appeal No 2 of 2000)
13. The court considered the appellant defence the appellant was convicted and sentenced to fifteen years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was the first offender. The court sentenced the appellant to the sentence below the minimum requirement which is life imprisonment under section 8(2) of the [Sexual Offences Act](#), No 3 of 2006 in the event the victim is below 11 years. In this case the victim was 8 years. In my view, the sentence imposed was lenient.
14. That notwithstanding, the trial court exercised its discretion during sentencing and I see no reason to interfere. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF OCTOBER 2024

D. KAVEDZA

JUDGE

In the presence of:



Appellant Present

Maroro for the Respondent

Achode Court Assistant

