



**Vitemo v Republic (Criminal Appeal E045 of 2021)
[2023] KEHC 19686 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL APPEAL E045 OF 2021**

JR KARANJA, J

JULY 6, 2023

BETWEEN

CLINTON VITEMO APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant Clinton Vitemo appeared before the Principal Magistrate at Kapsabet charged with defilement Contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*, in that on the April 30, 2021 in Kapsabet town within Nandi County, raped BR a girl aged ten (10) years.
In the alternative, the Appellant faced a charge of indecent act with a child Contrary to Section 11(1) of the *Sexual Offences Act*.
2. Upon plea of not guilty, the Appellant was tried and convicted on the main count. He was then sentenced to serve life imprisonment. Being aggrieved with the conviction and sentenced the Appellant preferred the present appeal on the basis of the grounds set out in his petition of appeal filed herein. His main complaint is that he was convicted on the basis of insufficient evidence which did not prove the case against him beyond reasonable doubt and that his defence was disregarded by the trial court.
3. The Appellant appeared in person at the hearing of the appeal which was canvassed by way of written submissions. The Respondent/State represented by the Learned Senior Principal Prosecution Counsel, Ms Brenda Oduor Bengo, opposed the appeal on grounds and arguments set out in its written submission.
4. The court's duty after considering the appeal and the rival submissions was to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.



In that regard, the prosecution case was briefly that the child victim (PW3) was playing at her home when the Appellant, her neighbour, requested her to assist him with drinking water. As the water was not sufficient, he called her into his house to be given a container to fetch water for him.

5. In the process, the child victim entered the Appellant's house after which he closed the house door and proceeded to sexually violate her. He forcefully removed her inner clothes, threw her onto a bed and defiled her. She thereafter left the house but not without being warned by the Appellant that he would kill her should she tell anybody about the incident. She heeded the warning but her four year old brother "let the cat out of the bag" by telling her mother that she had been locked by the Appellant in his house. She then informed her mother that she had been defiled by the Appellant.

6. The mother, JSK (PW2) on receipt of the information examined the child victim and noted the presence of blood in her private parts. She then took the child to Kapsabet County Referral Hospital and reported the matter to the police.

A Clinical Officer at the hospital Danson Gichangi (PW1), examined the child and compiled a report (P3 form) (P Exhibit 1(a)) indicative of the child having been sexually assaulted.

7. Hellen Jemutai (PW4) of Kapsabet Police station investigated the matter and eventually preferred the present charge against the appellant whose defence was a denial and an indication that he was at his home on the material date when two police officers arrived there and arrested him. He was then informed of the allegations made against him by the child victim and her mother whom he knew both. He denied the allegation.

8. The trial court considered the evidence in its totality and without any difficulty believed the testimony of the child victim and indeed the entire evidence against the Appellant. In so doing, the trial court treated the Appellant's defence as having been overruled and disproved thereby arriving at the conclusion that the prosecution case had been proved beyond reasonable doubt in establishing that the child victim was not only defiled but also that the Appellant was responsible for the offence.

9. This court, on its own consideration of the evidence agrees with the trial court and upholds the Appellant's conviction as based on credible and sufficient evidence against him by the child victim (PW3) duly corroborated by that of her mother (PW2) and the Clinical Officer (PW3). Indeed, the evidence was cogent and evedible enough to disprove the Appellant's defence and alibi. It clearly showed that the Appellant took advantage of the innocence of the child victim and her trust in him as a harmless neighbour.

10. The sentence imposed upon the Appellant was lawful and in tandem with Section 8(2) of the *Sexual Offences Act*, which provides for life imprisonment in mandatory terms. The birth certificate (PEx 3) indicated that the child was aged eleven (11) years or thereabout as at the material date of the offence, hence the application of the aforementioned provision of the *Sexual Offence Act* which still holds sway to date.

In sum, this appeal is without merit and is dismissed in its entirety.

DELIVERED AND DATED THIS 6TH DAY OF JULY, 2023

J. R. KARANJA,

JUDGE

