



**Sumba v Republic (Criminal Appeal E079 of 2023)
[2024] KEHC 14924 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL APPEAL E079 OF 2023
A. ONG'INJO, J
NOVEMBER 7, 2024**

BETWEEN

GODFREY ODIWUOR SUMBA APPELLANT

AND

REPUBLIC RESPONDENT

(From original conviction and sentence by Hon. C. N. C. Oruo Principal Magistrate in Principal Magistrate's Court at Rongo in Criminal Case No. E. 014 of 2023 delivered on 17/10/2023)

JUDGMENT

1. The Appellant Godfrey Odiwuor Sumba was charged with the offence of defilement contrary to Section 8(1) as read with Sections 8 (3) of the *Sexual Offences Act* No. 3 of 2006 in Rongo PMC S. O. A. No. E014 of 2023. He was convicted based on evidence of 5 prosecutions witnesses and sentenced to serve 20 years jail term to run from 24.5.2023 when the Appellant was first remanded in custody.
2. The Appellant is aggrieved by the conviction and sentence and has preferred the appeal herein on the following grounds: -
 - i. That the trial court erred in law and facts by not complying with Article 50 (2) (g) and (h) of *the Constitution* of Kenya 2010;
 - ii. That the trial court erred in both law and facts by not observing that the ingredients of the offence herein were not proved to the required standard in law.
3. The prosecution's case was that the Appellant went to borrow salt from the complainant's parents house on 1st May 2023 at 8:00p.m to borrow salt and that when the complainant took the salt to him he grabbed her and dragged her into his house where he removed her trouser which got torn and defiled her on his bed. The complainant said the Appellant covered her mouth and she could not scream when she was being defiled.



4. That when the Appellant was done defiling her the complainant ran out of the house and went to report to her mother PW2. PW2 the mother to the complainant informed the complainants father and they took her to hospital where she was treated.
5. The matter was reported at Awendo Police Station and PW3 P. C. Kemunto commenced investigations that culminated in the arrest of Appellant who was charged.
6. PW4 clinical officer produced P3 forms and PRC form duly filled and established that on examination the complainant was defiled.
7. PW5 P. C. Alice Muthoni was led by complainant and her parents to go and arrest the Appellant on 18th May 2023 at Mariwa Centre. This appeal was canvassed by way of written submissions. The Appellant in his submissions questioned why he did not take the salt from the complainant's house. He also said that PW2 did not specify the time she woke up and found PW1 crying. He said that PW1's evidence and page 7 line 29 was contradicted her allegations that her mother was in another room 6 doors away from where she was.
8. The Appellant also said that the story that the PW2 met PW1 crying was bot supported by PW1, The Appellant submitted that there was no indication of threat to the complainant to prevent her from screaming. He said that the story was fixed to fabricate him
9. The Appellant also submitted that whereas the complainant was found with bacterial infection in the contrary he was not found with bacterial infection. He said that the ingredient of penetration was not proved to the required standard in law and facts.
10. The Appellant argued that the crucial officer was on a mission to fill up the gaps and he urged the court to consider the holding of Ochieng J (as he then was) that mandatory sentences under [Sexual Offences Act](#) are unconstitutional.
11. The Respondent's filed submission dated 19th September 2024. They submitted that the testimony of the complainant that she was defiled was corroborated in the Clinical Officer – PW4 who produced P3 and PRC form and treatment notes and indicated that there were bruises on the labia majora and that penetration took place.
12. The Respondent also submitted that the age of the complainant was not in dispute. It was also submitted that the identity of the Appellant was not in dispute.
13. The Respondent contended and relied on the holding in Titus Muasya Katiku vs. Republic Criminal Petition No. E020 of 2022 where it was held that sentencing was a discretion of the trial Court.
14. The Respondent invited the court to dismiss the appeal as the Appellants' conviction and sentence were within law.
15. Being a first Appellate court, the evidence tendered by the prosecution and the Appellant in the trial court has been re-evaluated putting into consideration that this court did not have the benefit of seeing and hearing witnesses testify and find that all the ingredients of the offence of defilement were proved by the prosecution. The evidence of the clinical officer – PW4 and her cross examination by the Appellant does not reveal any evidence of bad faith while executing her duties at Awendo Sub – County Hospital. The complainant was defiled on 18.5. 2023 and she was examined on 20.5.2023 where it was observed that she had bruises on labia majora proof that there was penetration on her genitals.
16. The Appellant was known to the complainant as they were neighbours. They had not differed before and nothing came up that could have made the prosecution witnesses to fabricate the Appellant.



17. This court therefore finds that the appeal on conviction and sentence has no merits and is dismissed.

DELIVERED DATED AND ASSIGNED AT MIGORI THIS 7TH DAY OF NOVEMBER, 2024.

A. ONG'NJO

JUDGE

In the presence of:

