REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. E041 OF 2021

GERALD MUTUA.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTION

JUDGMENT

1. Gerald Mutua was charged with the offence of Defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act. The particulars of offence for his charge were that: -

> ***'On the 21st day of February 2020, at [particulars withheld] Village, Kianjai Location in Tigania West Subcounty within Meru County, unlawfully and intentionally caused his penis to penetrate the vagina of WG a child aged 7 years old.'***

2. He was charged with the alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars of offence for this alternative charge were that: -

> ***'On the 21st day of February 2020, at [particulars withheld] Village, Kianjai Location in Tigania West Subcounty within Meru County, intentionally touched the vagina of WG a child aged 7 years old.'***

3. The Appellant pleaded not guilty to the charges and the matter proceeded to full trial with the accused being placed on his defence. He was ultimately convicted for the offence of Defilement contrary to Section 8 (1) as read together with Section 8 (2) of the Act and thereafter sentenced to fourty (40) years imprisonment by Hon. Sogomo G (P.M). He is dissatisfied with the conviction and sentence of the trial Court and has lodged the instant appeal raising the following grounds of appeal: -

> ***i) That the learned trial magistrate erred in law and fact by failing to note that the prosecution witnesses gave inconsistent, contradictory and conflicting testimonies.***
>
> ***ii) That the learned trial magistrate erred in both law and fact by sentencing the Appellant to serve fourty years imprisonment which was harsh and excessive without considering the facts adduced before Court.***
>
> ***iii) That the learned magistrate erred in both law and fact by failing to note that the investigation was shoddy.***
>
> ***iv) That the learned trial magistrate erred in both law and fact by failing to note that the vital witnesses were not availed before Court to clear doubts.***
>
> ***v) That the learned trial magistrate erred in matters of law and fact by failing to note that the Prosecution did not prove their case to the required standard as required by the law by failing to note that there was a grudge which gave birth to this case.***
>
> ***vi) That the learned trial magistrate erred in both law and fact by rejecting the Appellant's defence without giving cogent reasons.***

Appellant's Submissions

4. The appeal was canvassed by way of written submissions. The Appellant submits that the evidence tendered by the Prosecution was not enough to sustain a conviction. He urges that his charge sheet records his nationality or tribe as Ameru which does not exist and that his nationality and tribe is Kenyan and Meru respectively.

5. He then urges that the Prosecution witnesses gave inconsistent, contradictory and conflicting testimonies in that there are doubts as to

who got the first report on the ordeal. He urges that PW1 said that she first reported to K and the very PW1 also said that she told C, after beating her. He urges that PW1 was beaten by C to force her to speak what C wanted to hear. He urges that if PW1 was really defiled, she should have volunteered the information without having to be beaten. He urges that the case was intended to fix him following the grudge held against him after he broke off the relationship with a female member of the family. He urges that he raised the issue of a grudge during hearing when he cross-examined the Prosecution witnesses as well as during his defence. He cites the case of *Rosemary Wanja Mwagiru & 2 Others vs Attorney General & 2 Others* for the proposition that the criminal process should not be used to settle personal scores. He urges that every member of the family had the motive of punishing him because they all claimed to have taken the complainant either to the police station or to the hospital. He further urges that there is doubt as to who is PW1's mother since PW1 testified that she previously lived with her mother GK and yet PW3, SK also claimed to be PW1's mother. He cites the case of *Dankerai Ramisham Pandya vs R, E.A.C.A (1957)* for the proposition that contradictory and inconsistent evidence should not be relied upon. He urges that the aforesaid GK did not record a statement or testify before the Court and yet she would have made a very vital witness in the case. He cites the cases of *JMN vs R, Criminal Appeal No. 139, 140, 141* and *Bukenya vs Uganda (1972)* for the proposition that failure by the Prosecution to summon vital witness infers that the case was not proven beyond reasonable doubt. He further urges that there was inconsistency on the time PW1 took to report back home in that PW2 said that this was 30 minutes whilst PW3 said that this was about 1 hour. He urges that these contradictions point to the untruthfulness and creates doubt. He cites the case of *Twahanga M. Alfred vs Uganda, Criminal Appeal No. 139 of 2001 (2003) UGCA* which was cited in *Annah Kendi vs R (2016) eKLR.* He further cites the case of *Philip Muiruri Ndaruga vs R, Criminal Appeal No. 76 of 2012 (2016) eKLR,* for the proposition that an accused person is entitled to the benefit of doubt as a matter of right. He further urges that the exhibits produced in Court do not match and this creates doubts as to the authenticity of the same. He urges that at page 9 to 10 of the proceedings, P3 form was marked as PMF1, treatment notes PMF2 and lab tests PMFI3 and yet the medical records identified by PW2 at page 12 reads PMF 1 1 2 & 3.

6. He further urges that it was not in order for PW4, the clinical officer not to subject the blood stained under pant for DNA as his findings said that the patient had blood stained under pant. He urges that no scientific test (DNA) was conducted as per Section 36 (1) of the Sexual Offences Act to ascertain whether or not he committed the offence. He urges that the trial magistrate rejected his defense which raised facts to support his acquittal. He further urges that the sentence of 40 years is harsh and excessive and he urges that the trial magistrate did not apply Section 333 (2) of the Criminal Procedure Code when sentencing the Appellant.

Respondent's Submissions

7. The Respondent filed submissions dated 7th July 2021. They urge that they proved their case against the Appellant beyond reasonable doubt. With respect to the victim's age, they urge that this was proven to be 7 years old as per the P3 form which was produced as PEXB1. They rely on the case of *Joseph Kieti Seet vs R (2014) eKLR* where the other case of *Francis Omuroni vs Uganda, Criminal Appeal No. 2 of 2000* was cited.

8. They further urge that penetration was proven by the evidence of PW1, PW2 and PW4. That PW1 testified that 21st February 2020, she was sent to Kanja to go to the shops and along the way, she met with the Appellant who told her that he would buy for her a bun and that as they were walking together to the shops, the Appellant pulled her into a maize plantation, removed her skirt and under pant and defiled her. They urge the PW1's testimony was found to be truthful and honest within the proviso of Section 124 of the Evidence Act. He cites the case of *J. W. A. vs R (2014) eKLR* and *Mohamed vs R (2006) 2 KLR 138*. He further urges that PW1's evidence was corroborated by PW2's who testified that PW1 had been sent to the shops and upon her return after 30 minutes, she saw PW1 bleeding from her private parts and that when she inquired, PW1 told PW2 how the Appellant had defiled her in their neighbour's farm.

9. They further urge that the evidence of the clinician PW4 who stated that PW1 had blood stained under pant and she was in a panic mode and was crying corroborates that of PW1 and PW2. That as per the P3 form, PW1 was found to have a bruised labia majora and minora and that her hymen was freshly torn and there was vaginal bleeding. That it is clear that PW1 was not beaten by ants as alleged by the Appellant but she was defiled by the Appellant.

10. They further urge that PW1's identification of the Appellant was by recognition as she recognized him and also mentioned his name during hearing. That PW1 mentioned during cross-examination that PW1 had once been married to her sister but she left him after the Appellant had threatened to kill her. That further, the offence occurred at 1.00 p.m when there was enough sunlight and there was thus no mistaken identity. That PW2 also said that she knew the Appellant well because he was a neighbor and had married his sister EK.

11. On sentencing, they urge that the Court did take into account the *Muruatetu* case as well as the fact that the Appellant did not seem remorseful during his mitigation. They urge for the court to uphold both the conviction and sentence.

Determination

12. This being a first appeal, the Court has a duty to analyze the facts and the law and make its own independent findings, taking into account that it is the trial Court that had the benefit of observing the witnesses demeanour. See ***Okeno vs R (1972) EA 32.***

13. The two issues for determination that emerge from the grounds of appeal and parties submissions are as follows: -

i) Whether or not the Prosecution proved their case beyond reasonable doubt.

ii) Whether or not the sentence meted out by the trial Court was harsh and excessive.

Whether or not the Prosecution proved their case beyond reasonable doubt.

14. In cases of defilement, the elements to be proven in order to sustain a conviction include the age of the complainant, the act of penetration and the linkage of the said act to the accused person. See Section 8 of the Sexual Offences Act. In order to establish whether all these

elements were proven, this Court is enjoined to re-look the evidence tendered. The Prosecution called a total of 5 witnesses.

Prosecution's Case

PW1

15. PW1 was the complainant herself who went through a *voire dire* exercise. She testified that she lives at Ripples International but previously live at Amato with her mother GK and siblings. She testified that she is at Ripples because bad things were done to her by Gerald Mutua who is seated there *(she pointed to the Appellant).* She testified that on 21st February 2020, during the day, her elder sister K had sent her to the shops with Ksh 20/= to buy a bun (ngumu) and she met the Appellant on the way who told him that she would buy her the bun. That they walked together and before they got to the shop, the Appellant pulled her into a maize plantation, removed her skirt and under pants and then put his urinating thing into her urinating thing. That the Appellant threatened to stab her and showed her a dagger which he threatened to hurt her with if she told anyone what he had done to her. That she was bleeding from her urinating thing and she wore her clothes and went to the shop to buy the bun. That when she went back home, C asked her why she was bleeding and when she refused to tell her, she beat her up and she then revealed what had happened. That her mother who heard what she had to say took up the matter and took her to the police station and she was then taken to hospital.

16. The Court inquired of her and she said that the accused is her neighbor and she knows him quite well. She said that the accused molested her in a maize farm belonging to Njege.

17. On cross-examination, she said that nothing bit her in the river where she had gone swimming on that day. She said that a water bug had bitten her but on the hand. She testified that her sister K was once his wife but she left him when he threatened to kill her.

PW2

18. PW2 was CM who testified that on 21st February 2020, at around 1.00p.m, her sister's EK's ex-husband arrived and begun prowling their compound before leaving. That E then sent their younger sister PW1 to buy a bun and she went but she delayed and returned 30 minutes later and that she was bleeding on her private parts and when they asked her, she told them that the Appellant had raped her in a neighbour's, Ngeje's farm. That they took PW1 to the police and then they were referred to Miathene Hospital. She pointed at the Appellant whom she said she knew very well because he is their neighbor and had married her elder sister EK.

19. On cross-examination, she repeated her evidence in chief. She also said that a woman by the name Kanairo had told them that she had seen the Appellant walking with PW1.

PW3

20. PW3 was SK who testified to be PW1's mother. She testified that on 21st February 2020, at around 1.00p.m, PW1, her daughter had been sent by another of her daughters, EK to the shops with Ksh 20/= to buy a bun. That PW1 returned home about an hour later bleeding from her private parts and that after probing PW1, she revealed that the Appellant had intercepted her on the way and done to her bad manners. They took PW1 to the police post at Kianjai then to hospital at Miathene. She identified the Appellant in Court whom she said was her village mate. On cross-examination, she said that she inspected PW1's wound on her vagina and it did not look like an insect bite.

PW4

21. PW4 was Geoffrey Muthomi Murithi, a clinician at Miathene Hospital. He produced a P3 form for the complainant aged 7 years who he said attended hospital on 21st February 2020 with a history of being waylaid and defiled by someone known to her. That the patient had blood stained in her under pant and was in panic mode and was crying. That she had a bruised labia majora and minora and she had a freshly torn hymen and was bleeding vaginally. He concluded that the patient had been defiled. He testified that the patient was placed on PEP and antibiotics.

22. On cross-examination, he said that the patient was in great pain and the hymen was torn.

PW5

23. PW5 was No. 237167 PC Doris Karimi of Kianjai Police Post who confirmed having received the complaint of defilement of the complainant by the Appellant on 21st February 2020. She said that the complainant was accompanied by SK and that she booked the report and escorted the minor to Miathene Hospital. That the suspect had been arrested earlier by his colleague from Tigania Police Station. That the suspect was known to her prior to the case. That she visited the scene, led by the complainant and she drew a sketch map of the area which was a maize plantation with a road nearby. She identified the girl's under pants and skirt both of which were blood stained. On cross-examination, she narrated how the arrest happened in that the statements from witnesses led her to arrest him and that he was arrested at his home and he was not accompanied by anyone during the arrest.

Defence Case

DW1

24. The accused was placed on his defence. He testified to be a resident of Kianjai and a shoe vendor. That the mother of the complainant was her mother-in-law. That she had seduced the said woman's daughter, K from the year 2018 to 2019 and he was about to marry her but

K's mother did not like his cohabitation arrangements with her daughter and that is why she framed the case against him. He said that all the allegations against him are lies.

DW2

25. DW2 was Charity Kanario, the sister to the accused. She testified that on 22nd February 2020, she was with the accused at their home from morning up to 2.00 p.m. That she was cooking while the accused was washing clothes. That after laundry work, the accused went to the farm to tend to tree seedlings and after a while, the police vehicle arrived at 3.00p.m and she saw the accused get arrested. On cross-examination, she said she could not recall the actual date of the events she had talked about. That the accused and her reside in the same compound and that the girl said to have been defiled is the daughter of their in law Karimi and that the accused had married from their family.

Analysis

Age of the Complainant

26. With respect to the age of the complainant, this was not contested. Going by the evidence of all the prosecution witnesses, supported by medical evidence being the P3 form, it was proven that the complainant was 7 years old at the time of the offence. A person of 7 years falls under the definition of a child both under the Sexual Offences Act and the Children's Act.

Act of Penetration by the Accused

Identification

27. During hearing, the complainant was able to identify the Appellant as her assailant. She also testified to have known the Appellant as her sister's ex-husband which fact was confirmed by PW2, PW3, DW2 and the Appellant himself in his defence. In addition she confirmed that the Appellant is their neighbor. This was therefore someone well known to her and she could not have been mistaken as to his identity. This was evidence of recognition which this court has previously held to be more reliable and weighty than that of identification of a stranger. In the case of ***Anjononi & Others v Republic, (1976-80) 1 KLR 1566, 1568,*** **Madan, Law & Potter JJA** held as follows: -

> ***"...recognition of an assailant is more satisfactory, more assuring, and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other."***

28. Besides this, the incident occurred during the day and it was therefore easy for the complainant to recognize her assailant. This Court is therefore satisfied that the identification of the Appellant as the assailant was positive.

Penetration

29. On penetration, the complainant was on record that she had been sent to the shops by her elder sister, EK to buy a bun and while on the way, she met the Appellant who joined him in the pretext of wanting to buy for her the bun but on the way, pulled her into a maize plantation, removed her skirt and under pants and then put his *urinating thing* into *her urinating thing.* To this Court's mind, the phrases *urinating things* used by the child was used to refer to genital organs, being penis and vagina of the Appellant and complainant respectively.

30. The use of other terms other than the technical, scientific and legal ones to describe the act of sexual intercourse by children was discussed in the Court of Appeal case of ***Muganga Chilejo Saha vs R, Criminal Appeal No. 28 of 2016 (2017) eKLR*** where Asikhe Makhandia, K. M'Inoti and W. Ouko *(as he then was)* JJA held as follows: -

> ***"Naturally children who are victims of sexual abuse are likely to be devastated by the experience and given their innocence, they may feel shy, embarrassed and ashamed to relate that experience before people and more so in a court room. If the trend in the decided cases is anything to go by, courts in this country have generally accepted the use of euphemisms like, "alinifanyia tabia mbaya", (IE V R, Kapenguria H.C Cr. Case No. 11 of 2016), "he pricked me with a thorn from the front part of this body.", (Samuel Mwangi Kinyati v R, Nanyuki HC.CR.A. NO. 48 of 2015), "HE USED HIS THING FOR PEEING", (David Otieno Alex v R, Homa Bay H.C Cr Ap. No. 44 of 2015), "he inserted his "dudu" into my "mapaja", (Joses Kaburu v R, Meru H.C Cr. Case No. 196 of 2016), "he used his munyunyu", (Thomas Alugha Ndegwa, Nbi H.C. Cr. Appeal No. 116 of 2011), as apt description of acts of defilement. We, however, need to remind trial courts that the use of certain words and phrases like "he defiled me", which are sometimes attributed to child victims, are inappropriate, technical and unlikely to be used by them in their testimony. See A M M v R Voi H.C Cr. App. No. 35 of 2014, EMM V R Mombasa H.C Cr. Case No. 110 of 2015, among several others. Trial courts should record as nearly as possible what the child says happened to him or her.***

(Emphasis mine)

31. Further, PW2 and PW3 confirmed that the complainant took longer than expected to return and when she finally returned home, they saw that she was bleeding on her private parts and that when they probed her to say what had happened and she revealed that the Appellant had defiled her at a neighbour's (Njege's) farm. This is the same account that the complainant told the Court when the Court took it upon itself to ask her during trial.

32. PW1's evidence of penetration was corroborated by that of PW4, the clinician, who testified that upon examination, he observed that the complainant had blood stained in her under pant and was in panic mode and was crying, and that she had a bruised labia majora and minora

and she had a freshly torn hymen and was bleeding vaginally. This he testified, led to the conclusion that she had been defiled. He testified that the complainant was placed on PEP and antibiotics. The Appellant contends that a DNA ought to have been done to link him to the offence. This Court finds that indeed, a DNA test would raise the standards and veracity of the evidence adduced, but notwithstanding the absence of a DNA test, there are other ways of linking an accused person to a sexual offence particularly within the proviso of Section 124 of the Evidence Act.

33. PW5 also corroborated the evidence of PW1 as she testified to have been led to the scene of crime by the Appellant herself. She testified that she drew a sketch map of the area which was a maize plantation with a road nearby. She also identified the girl's under pants and skirt both of which were blood stained.

34. The Appellant contends that if indeed PW1 had been defiled, she ought to have volunteered this information instead of having to be beaten up. This Court finds that PW1 went on record that the Appellant had threatened her with a dagger demand her not to tell anyone what had happened. This is indeed an adequate explanation as to why the child, a 7 year old at the time was afraid to speak up.

35. The Appellant has raised the issue of inconsistency in the Prosecution's evidence in that while PW2 said that PW3 said that the complainant had taken 30 minutes to return, PW3 said that the complainant had taken 1 hour to return. This Court finds that the difference between PW2's and PW3's estimation of how long it took for the complainant to return from the shops was a mere 30 minutes which could reasonably be explained by various factors. This Court does not find this inconsistency material enough as to impute doubt on the Prosecution's case.

36. The Appellant also pointed out inconsistency in who is the complainant's mother in that at first, the complainant said that her mother was GK but later on it is PW3, SK. This Court finds that the Appellant ought to have raised this during cross-examination. In any event, the Appellant admitted that PW2, SK is the complainant's mother who was once his mother-in-law before he parted ways with EK.

37. This Court has also considered that the complainant had at one point stated that she had been bitten by an insect but she testified that this was on her hand and further, the medical evidence of vaginal bleeding and freshly torn hymen outweighs the narrative the Appellant tried to advance that the cause of injury was anything other than defilement. This Court thus finds that all the element necessary for the offence of defilement were proven.

Other issues raised by the Appellant

Failure to call crucial witnesses

38. The Appellant has urged that the complainant first mentioned a lady namely GK as her mother but later on said that her mother was SK. This Court has already discussed that the Appellant himself admitted that SK was the complainant's mother and was also her former mother-in-law. There would therefore be no reason why he insists that the mother was someone else. Further, the Appellant has not indicated the nature of evidence he expected the said GK would lead in the matter, different from what has already been led. This Court does not thus find that the failure to call her as a witness means that she would have led adverse evidence against the Prosecution and neither does the Court find that this was an omission likely to be construed as blow to the Prosecution's case as per the test in the case of ***Bukenya vs Uganda (1972) EA 549.***

Purported frame up

39. The Appellant urges that this case was framed up against him because of his break up with the complainant's sister, EK. This Court however observes that the factual basis upon which the Appellant's claim for a grudge is founded is disputable. While the Appellant claims that he is the one who broke of the relationship thereby upsetting EK's mother, PW2, the Prosecution witnesses testified that it is the said E who broke off the relationship after the Appellant had threatened to kill her.

40. Further to the above, the Court has observed that the Appellant contradicts himself on his explanation for this purported grudge. While he urged in his written submissions that PW2 was not happy when he broke off the relationship with her daughter, in his defence in the trial Court, he asserted that PW2 was not happy with his cohabitation with her daughter EK that he was planning to get married to. Going by these glaring contradictions, the Court is not able to accept let alone consider the existence of a fact of grudge leading to a purported frame up of the case against the Appellant.

41. This Court finds the other issues raised by the Appellant including that his tribe and nationality were not captured right in the charge sheet, the issue of marking of the exhibits and the fact that the family of the complainant accompanied her to the hospital and police station to be trivial, not material enough to cause the Court to disturb the finding of the trial Court.

42. In the end, this Court finds that all the element of the offence of Defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offence Act against the Appellant were proven beyond reasonable doubt by the Prosecution.

Whether or not the sentence meted out by the trial Court was harsh and excessive.

43. The leading authority on the question of interfering with sentence is that of ***Wanjema v Republic, Criminal Appeal No. 204 of 1970 (1971) EA 493, 494,,*** where Trevelyan J held as follows:-

> ***'An appellate Court should not interfere with the discretion which a trial Court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.'***

44. The penalty sections for the offence of defilement are categorized according to the age of the victims. In the instant case where the victim was 7 years old at the time of the offence, the relevant provision is Section 8 (2) which provides as follows: -

> ***A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.***

45. From the above, the 40 years sentence meted out upon the Appellant was in fact below the maximum penalty which is imprisonment for life. This is an indication that the trial Court exercised its discretion well. This Court has read the sentencing proceedings and observes that the trial Court took into account the holding of the Supreme Court in the *Francis Muruatetu* case, alongside the fact that the Appellant did not express remorse for his actions. The Court considered that the act of defilement was meted out against a child of 7 years at knife point. This Court does not find any reason to disturb the finding of the trial Court. It may however be important to point out that the Supreme Court in tis directions of 6th July 2021 clarified that the finding in the *Francis Muruatetu* case was with respect to murder and the same ought not to have a blanket application on all other matters.

Conclusion

46. The complainant, a young girl of 7 years at the material time, acting on instructions given to her by her elder sister *(said to be the Appellant's ex-wife or ex-girlfriend, whichever the case)* was on her way to the shops to buy food. On her way, she was intercepted by the Appellant *(her very sister's ex-boyfriend or ex-husband, whichever the case)* who in the pretext of assisting her to buy the food, forced her into a maize plantation and defiled her. The complainant positively identified her assailant as the Appellant. She could not have been mistaken on his identity because she knew the Appellant as her sister's former husband, a fact which the Appellant himself admitted in Court.

47. The complainant's evidence of defilement was clear and consistent and she went ahead to give the exact location, description and owner of the farm where the defilement happened, which was a neighbour's maize plantation farm. PW5 attested to the fact that the complainant herself led her to the maize plantation where she was defiled by the Appellant. The complainant's evidence was further corroborated by that of PW2 and PW3 who both testified that they witnessed the complainant come back home, after a prolonged period of time, while bleeding on her genitalia and upon being probed, she revealed that the Appellant had defiled her. There was also medical evidence to confirm that the complainant had blood stained in her under pant; that she had a bruised labia majora and minora; that she had a freshly torn hymen; and that she was 'bleeding vaginally'. The Court finds that there was overwhelming evidence by the Prosecution to lead to the conclusion that the charge of Defilement contrary to Section 8 (1) as read together with Section 8 (2) of the Sexual Offences Act against the Appellant was proven beyond reasonable doubt.

48. The Appellant's defence of a frame up because of a grudge does not hold water for reasons that the factual basis upon which this allegation was founded was inconsistent and contradictory. In addition, without shifting the burden of proof, there was no other witness, including DW2, the Appellant's own sister who confirmed the existence of this purported grudge. The Appellant's alleged grudge did not therefore raise a reasonable doubt.

49. Finally, the Court does not see any reason on the basis of the test in the aforementioned case of ***Wanjema v R*** to disturb the finding of the Court on sentencing. The Court in fact gave a lenient penalty taking into account the circumstances of the case and the maximum penalty provided for defilement of children below the age of 7 which is imprisonment for life.

ORDERS

50. Accordingly, for the reasons set out above, this Court makes the following orders: -

> ***i) The Appellant's Appeal is hereby declined and the finding of the trial Court is hereby affirmed.***

Order accordingly.

DATED AND DELIVERED THIS 16TH DAY OF SEPTEMBER 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

Gerald Mutua, the Appellant in person.

Ms B. Nandwa, Prosecution Counsel for the Respondent.