



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL NO. E014 OF 2020**

**ROYFORD MURANGIRI.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTION**

**JUDGMENT**

1. Royford Murangiri, the Appellant was charged with the offence of 'Defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act No. 3 of 2006' 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' in Nkubu Criminal Case No. 28 "B" of 2018.

2. The particulars of offence for the offence of Defilement were as follows: -

*'On the 13<sup>th</sup> day of August 2018, at [Particulars Withheld] Village, Mweru Location in Imenti South Sub-County within Meru County intentionally and unlawfully caused his penis to penetrate the vagina of TK a girl of 7 years.'*

3. The particulars of offence for the offence of Committing and Indecent Act with a Child were as follows: -

*'On the 13<sup>th</sup> day of August 2018, at [Particulars Withheld] Village, Mweru Location in Imenti South Sub-County within Meru County intentionally and unlawfully touched the vagina of TK a girl child of 7 years with his penis.'*

4. He pleaded not guilty and the matter proceeded to full trial after which the Court, Hon. E. M. Ayuka SRM convicted him for the offence of Defilement under Section 215 of the Criminal Procedure Code. He was thereafter sentenced to thirty (30) years imprisonment.

5. Being dissatisfied with both the conviction and the sentence meted by the trial Court, he has preferred the instant appeal. He initially filed grounds of appeal but in his submissions made amended supplementary grounds of appeal. He raises the following grounds of appeal: -

***i) That the Learned Trial Magistrate erred in matters of law and fact by failing to note that the Prosecution failed to summon crucial and vital witnesses before Court to shed light in this matter.***

***ii) That the Learned Trial Magistrate erred in both law and fact by failing to note that the investigation was shoddy.***

***iii) That the Learned Trial Magistrate erred in both law and fact by failing to note that the clinical examination report did not link the accused with the ordeal.***

***iv) 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 standards as required by the law.***

***v) That the Learned Trial Magistrate erred in matters of law and fact by rejecting the Appellant's defense without any articulate reason.***

***Appellant's Submissions***

6. The appeal was canvassed by way of written submissions. The Appellant in his submissions urges that the Prosecution failed to prove their case against him to the required standard and that the evidence tendered by the prosecution witnesses was not enough to sustain a conviction. He urges that the complainant's brother was a vital and crucial witness who should have been called to testify on whether he saw

him (the Appellant) defiling the complainant. He urges that according to the evidence of the complainant's father, the complainant had been left at home with her brother. He relies on the case of *JMN vs Republic, Criminal Appeal No. 139, 140, 141* and *Bukenya vs Uganda (1972)* for the proposition that failure to call vital witnesses leaves no doubt that the prosecution did not prove their case beyond reasonable doubt.

7. He also urges that the investigations conducted by the Prosecution was shoddy, a scam and unprofessional. He urges that to secure a conviction in a case such as this, it was necessary to have an eye witness or independent evidence from an independent body and that further, no D.N.A test was conducted to ascertain the truth.

8. He further urges that the clinical officer, PW3 was not competent to carry out the examination pertaining the charges. He referred the Court to PEX1 marked as MF11 i.e post rape care form which indicates that after carrying out the examination, he found no blood stains on the clothes of the complainant whereas in his evidence (Pg 8 line 20-21) he stated that on examination, it was revealed that there were blood stains in the underwear. He urges that this medical evidence was conflicting creating doubt as to the seriousness of the medical expert on his assignment.

9. He finally urges that he was not accorded a fair trial as per Article 50 (g) in that the trial Court refused to give him a lawyer and statement.

#### **Prosecution's Submissions**

10. The Prosecution filed submissions dated 7<sup>th</sup> July 2021. They urge that in order to secure a conviction for a charge of defilement, the Prosecution must prove all the three elements of defilement as set out in Section 2 of the Sexual Offences Act and as highlighted in the case of *Charles Wamukoya Karani vs Republic, Criminal Appeal No. 72 of 2013* being the age of the complainant, proof of penetration and positive identification of the assailant. They urge that they established the age of the complainant to be 8 years which was confirmed by PW1, her father and evidenced by the birth certificate which was produced as PEX1 and the P3 form. They rely on the case of *Joseph Kieti Seet vs Republic (2014) eKLR* in which the case of *Francis Omuroni vs Uganda, Court of Appeal, Criminal Appeal No. 2 of 2000* was cited for the proposition that the age of a victim in defilement cases is to be established by medical evidence, the birth certificate and the victim's parents or guardian by observation and commonsense.

11. They urge that penetration was also proven as PW1 stated that on 13<sup>th</sup> August 2018, the Appellant lied to her that he would take her to the shop however on the way, he held PW1 and took her into a thicket and defiled her. That Appellant had tricked her into showing him where the shop was but he turned against her. That the Appellant held her, blocked her mouth with his hands, carried her into the thicket and removed her clothes and defiled her. That PW1 also stated that the Appellant did '*tabia mbaya*' on her. They rely on the case of *Too vs Republic (2020) eKLR* for the proposition that it is common for minors appearing in Court to use words such as the euphemism '*tabia mbaya*' to indicate that they were sexually assaulted. That PW1 also stated that the Appellant made her lie down in the thicket and that this is supported by the evidence of PW2 who stated that PW1 informed her of what the Appellant had done to her. That PW2 testified that when he got home from work, he saw that PW1 had grass on her head and clothes which corroborates PW1's testimony that she was defiled in a thicket.

12. They urge that the trial magistrate found the evidence of PW1 to be truthful and honest within the proviso of Section 124 of the Evidence Act. They urge that this was in line with the finding of the Court in the cases of *J. W. A. vs Republic (2014) eKLR* and *Mohamed vs Republic (2006) 2 KLR 138*.

13. They urge that PW3, the clinical officer stated that upon examination of PW1, he found blood stains in the inner wear, her blouse on the backside was dusty with pieces of grass, her vagina was swollen, had sexual bruises, hymen was broken, there was blood stains on the vagina and there was a foul smelling discharge. They rely on the case of *George Owiti Raya vs Republic (2013) eKLR* and that of *Benjamin Lihuru Matini vs Republic (2021) eKLR* to urge that the injuries sustained by PW1 as a result of defilement clearly indicate that there was penetration. That additionally, after observing the complainant's demeanour throughout her testimony, the trial magistrate found her, PW1 to be eloquent and consistent.

14. They further urge that the Appellant was positively identified by PW1 who was very categorical and emphatic that she knew the Appellant prior to the incident. That on the day of the incident, PW1 stated that she saw the Appellant and they conversed because he wanted to be shown a shop. They further urge that the family of the Appellant and the complainant are neighbours back at home and the Appellant was thus not a stranger to PW1. They urge that the identification was by way of recognition which was free from possibility of error. Relying on the case of *Francis Muchiri Joseph vs Republic (2014) eKLR* where the case of *Wamunga vs R (1989) KLR* was cited, they urge that in evidence of identification by recognition, the Court is enjoined to examine such evidence to ensure that the circumstances of identification were favourable and free from possibility of error.

15. On sentencing, they urge that the trial Court took into consideration the Appellant's mitigation and as well as the nature, gravity and seriousness of the offence as well as the age of the victim and found that the Appellant deserved a deterrent sentence and thus the 30 years sentence was very lenient. They urge that the Court uphold both the conviction and sentence.

#### **Determination**

16. This being a first appeal, this Court is invited to look at both questions of fact and of law. The Court is enjoined to analyze the evidence and make its own independent findings, of course bearing in mind that it is the trial Court that had the advantage of seeing the demeanour of the witnesses. See *Okeno v Republic (1972) EA 32*.

17. The Appellant's grounds of Appeal can be condensed into one point which forms the gravamen of his Appeal as follows: -

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

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

18. To begin with, this Court shall consider the necessary ingredients for the offence of defilement. Section 8 of the Sexual Offences Act provides as follows: -

***8. Defilement***

***(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.***

***(2) 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.***

***(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.***

***(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.***

***(5) It is a defence to a charge under this Section if –***

***(a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and***

***(b) the accused reasonably believed that the child was over the age of eighteen years.***

***(c) The belief referred to in subsection (5)(b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.***

19. Defilement occurs when a person commits the act of ***penetration*** with a child. Penetration under Section 2 of the Sexual Offences Act is defined as follows: -

***“penetration” means the partial or complete insertion of the genital organs of a person into the genital organs of another person;***

20. Genital organs under the very Section 2 of the Sexual Offences Act is defined as follows: -

***“genital organs” includes the whole or part of male or female genital organs and for purposes of this Act includes the anus;***

21. Child under the very Section 2 of the Sexual Offences Act is defined as follows: -

***“child” has the meaning assigned thereto in the Children Act (No. 8 of 2001);***

22. Child under Section 2 of the Children’s Act is defined as follows: -

***“child” means any human being under the age of eighteen years;***

23. From the above provisions of law, the key questions arising are whether the complainant was a child and whether there was penetration of the Appellant’s genitals into the complainant’s genitals.

***Evidence adduced at trial Court***

***Prosecution’s Case***

***PW1***

24. This Court has had a chance to examine the evidence led at the trial. PW1, an 11 year old was taken through a *voire dire* and found intelligent enough to testify. She said that she is TK and she stays at Igoji. That she schools at [Particulars Withheld] Primary School and she is in class four. That she stays with her father PK and brother BM. That on 13<sup>th</sup> August 2018, she was defiled by the accused who lied to her that he would take her to the shop and he then took her to a thicket where he defiled her. That the accused had tricked her that he wanted her to show him the shop and that it was at 7.00 pm. That the accused held her and blocked her mouth with his hands and carried her. That he removed her clothes in the thicket and that she had a dress and pants. That he removed her pants and pulled up her dress and did ‘*tabia mbaya*’ to her. That he inserted his penis to her vagina. That he made her to lie down in the thicket and she could not speak as he had blocked her mouth. That the accused then told her not to tell anyone and she went back home.

25. She testified that she told her father what had transpired and she went back home at about 8.00p.m to 8.30 p.m. That her father took her

to the hospital at Kanyakine and her father then arrested the accused and took him to the police station. The doctor took tests and filled up medical documents. She testified that she was born in 2010. That she knew the accused prior to the case as he used to work as a casual worker fetching water for people. That she knows his home which is not very far from theirs. That she left home with the accused and she had seen him and he also spoke to her. That the incident took place not far from their home. That the accused in the dock is the one who defiled her. On cross examination, she testified that the accused took her far from the house at their home and did 'tabia mbaya' at a thicket.

## **PW2**

26. PW2 was Patrick Kimathi Kiara, who is the complainant's father. He testified that the Complainant is a pupil at [Particulars Withheld] Primary School at class four and that she was born on April 2010. That he has the birth certificate. He testified that on the material day, he left the complainant and her brother BM home and went to work and that in the evening, the accused left him where he was working. That when he went back home, at about 8.00p.m, he got the complainant asleep and she had grass on the head and clothes. That the complainant started to cry and she then narrated to him that the accused had come and asked if there was a shop nearby. That she narrated how the accused then requested her to escort him to the shop and promised her a cookie and that on the way, the accused grabbed her and took her to the thicket where he defiled her. She narrated how after he was done, he let her go and asked her not to reveal to anyone.

27. That the accused went into hiding and he gave the police the clothes. That he found the accused where he was hiding and took him to the police station at Igoji. That he took the child to hospital at Kanyakine and he gave the police the child's birth certificate. That the doctor filled up a P3 form for the complainant. That the doctor examined the complainant and confirmed that the complainant had been defiled.

28. He testified that he knows the accused as well as his home which is not far from his and that the accused left him at about 2km away on the material day and went to defile his daughter. That he has never had a grudge with the accused and that he has known the accused since childhood. That the accused went into hiding and he found him chewing miraa and then escorted him to the police. On cross-examination, he said that he did not know why the accused defiled the child. He denied sending the accused to collect miraa from his home and he denied having given the accused any money.

## **PW3**

29. PW3 was Moses Bayenia, a clinical officer at Kanyakine sub-county hospital who testified to have been a clinical officer for over eight (8) years. He testified that he was trained at Kenya Medical Training College. He produced medical documents for the complainant. That the complainant was then aged 7 years old and she gave a history of defilement by someone well known on 13<sup>th</sup> August 2018 at about 6.30 p.m. That on examination, it was revealed that there were blood stains in the inner wear, dusty blouse in the back side with grass pieces, her vagina was swollen, sexual bruises, hymen was broken and that on the vagina, there was blood stains with foul smelling discharge. That the tests revealed that she was V.D.R.L non-reactive, Hepatitis B negative, H.I.V negative, and that no spermatozoa was seen. He testified that there was the presence of a vaginal smell with several bruises on the vaginal walls and blood. That stains of broken hymen is highly indicative of a very recent possible vaginal penetration. He testified that he has the P.R.C form dated 14<sup>th</sup> August 2018 and the lab results for the same date. That he relied on these documents to fill the P3 form. On cross-examination, he testified that he does not know the accused person and he does not know who defiled the child.

## **PW4**

30. PW4 was No. 113900 PC (W) Celina Zawadi of Igoji Police Station, the investigating officer. He testified that on 14<sup>th</sup> August 2018, while at the police station at about 7 a.m, he was allocated the case by O.C.S to investigate. That the case had been reported by the complainant in the company of two that she had been defiled by someone known to her. That the accused had already been arrested and handed over to the police station. That it was alleged that the accused went to the house of the complainant on 13<sup>th</sup> August 2018 where he found the complainant and asked her to show him a shop in the area. That the complainant accompanied the accused to show him a shop and on the way, at a lonely area, the accused grabbed the child, blocked her mouth and took her into a thicket, removed her trouser and defiled her. That once done, he gave the complainant Ksh 10 and asked her to go back home and never to tell anyone what had happened. That the complainant went back home and slept. That when the complainant's father came back home, he noticed that the complainant was not fine and on probing, she explained to him what had happened between her and the complainant. That on the next day, the complainant's father and other villagers went to look for the accused and they arrested him and escorted him to the police station.

31. He testified that he took both the accused and the complainant to hospital and the doctor examined the complainant and confirmed that she had been defiled. He testified that he then charged the accused. He testified that the complainant was 8 years old. On cross-examination, he testified that the accused was escorted to the police station by members of the public and that the case was reported against him. That the accused was not a stranger to the complainant and that the accused was also taken to hospital and subjected to tests.

## **Defence Case**

32. The Appellant was placed on his defence. The Court explained to him Section 211 of the Criminal Procedure Code and he opted to remain silent.

## **Analysis**

### **Age of the Complainant at the time of Offence**

33. The complainant's birth certificate was produced during hearing which indicated that she was born on 1<sup>st</sup> April 2010. The authenticity of this birth certificate was not an issue in the trial Court and this Court finds that the birth certificate is conclusive proof of the date of birth. Being born in April 2010, at the time of the offence in August 2018, the child was 8 years old. A person of 8 years old falls under the

definition of a child, both under the Sexual Offences Act and the Children's Act as discussed above and this ingredient was therefore proven by the prosecution.

### **Act of Penetration by the Accused**

#### **Identification**

34. On the matter of identification of the accused person, this Court observes that the complainant was able to identify the Appellant as the assailant. She testified that she knew the Appellant prior to the case as he used to work as a casual worker fetching water for people. She also testified that she knows the Appellant's home which is not very far from theirs. This fact was also confirmed by her father PW2 who further confirmed having been told by the complainant that it was the Appellant who had defiled her. The complainant was further able to identify the accused person in the dock as her assailant. The Court is satisfied that the Appellant's identification was positive.

#### **Penetration**

35. On the matter of penetration, this Court observes that PW1, the only eye witness testified that the accused tricked her into taking him to the shop and on the way, he turned against her and defiled her in a thicket. She testified as to how the accused took off her pants, pulled up her dress and inserted his penis into her vagina. She used the term '*tabia mbaya*' to describe the act that the accused did to her. She testified that all the while, the accused had blocked her mouth and after the act, he told her never to tell anyone what had happened.

36. With respect to the term '*tabia mbaya*' this Court finds that although the word in its literal sense could mean any perceived bad habit, in the context of sexual offences, this is a street term used by children to refer to the act of sexual intercourse. This was the holding of the Court of Appeal Case in the 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.CRA. 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”, (Josés 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.*

37. She testified that when she went home at about 8.00p.m to 8.30pm, she told her father what had transpired and the father took her to hospital. Her father, PW2 corroborated her evidence in that he confirmed having been narrated to by the complainant that she had been defiled by the accused person and he then took her to hospital. He also testified to have seen the complainant with grass on the head and clothes, which is the very same comment made following examination at the hospital.

38. PW3, the clinical officer at Kanyakine Sub-County Hospital testified that upon examination of the complainant, he found blood stains in the inner wear, dusty blouse in the back side with grass pieces, swollen vagina, sexual bruises, hymen was broken and that on the vagina, there was blood stains with foul smelling discharge. He concluded that the presence of a vaginal smell with several bruises on the vaginal walls and blood as well as the stains of broken hymen is highly indicative of a very recent possible vaginal penetration. This medical evidence was not challenged.

39. Although the Appellant raises questions as to the competence of the clinical officer, he did not give any reasons for stating so. Further, he did not raise the issue at the trial Court during cross-examination and this is therefore an afterthought. Further, although the Appellant has raised doubts as to the issue of blood and he submits that in the post rape care form it was recorded that there was no blood and yet the clinician testified that there was blood, this Court observes that the post rape care form gave a statement on the general appearance of the clothes, but the P3 form specifically referred to the under wear which had blood stains. There is therefore no obvious contradiction. Further, this Court observes that the presence or absence of blood is not the test for defilement but rather penetration. Both the post rape care form and the evidence of PW3 confirm that the vagina had bruises and there as a foul smelling discharge on the wall. The evidence of bruises and vaginal smell is very compelling and this Courts accepts that the act of defilement was indeed proven by the Prosecution.

### **Analysis of other issues raised by Appellant**

#### **Right to fair trial**

40. The Appellant urges that his right to a fair trial was curtailed because the trial Court refused to give him a lawyer and statements. This Court has however perused the record and observes that the Court on 3<sup>rd</sup> October 2018 ordered that the Appellant be supplied with the charge sheet and witness statements. Following then, the accused never raised any complaint of not having been supplied with the statements.

41. Concerning him not being given a lawyer, this Court finds that the obligation placed upon the State to provide an accused person with a lawyer is required if substantial injustice would result. Article 50 (2) (h) of the Constitution provides as follows: -

50. (2) Every accused person has the right to a fair trial, which includes the right-

**(g) To have an advocate assigned to the accused person by the State at the State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.**

42. The Appellant herein does not claim to have suffered substantial injustice. Furthermore, the requirement is most necessary when the accused person is a minor, as required under Section 77 of the Children's Act. The Court will therefore not quash the proceedings of the trial Court.

#### ***Failure to call crucial witness***

43. Another issue raised by the Appellant is that the Prosecution failed to call the complainant's brother, BM who was purportedly left at home with the complainant as per the evidence of PW2, the complainant's father. He urges that this brother ought to have been called to confirm whether he saw the Appellant defiling the complainant. This Court however observes that according to the Prosecution, there was no other eye witness apart from the complainant herself. None of the Prosecution witnesses alluded to the fact of the complainant's brother having witnessed the act of defilement, and this Court does not therefore find any fault in failing to call him as a witness. Further, the person that the complainant reported to about the incident was her father and not her brother. Other than stating that she lives with her father and brother, the Complainant did not mention her said brother in any other way which would have necessitated for him to be summoned as a witness. Furthermore, Section 143 of Evidence Act (Cap 80) Laws of Kenya provides as follows: -

#### **143. Number of Witnesses**

***No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact.***

44. In the Court of Appeal case of ***Keter v Republic [2007] 1 EA 135***, Bosire, Githinji and Onyango-Otieno JJA held as follows: -

***“The prosecution is not obliged to call a superfluity of witnesses but only such witnesses are sufficient to establish the charge beyond any reasonable doubt.”***

45. In the instant case, having found that the evidence of PW1, the complainant corroborated by the evidence of PW2, her father and the expert evidence of PW2, the clinical officer and that of PW4, the investigating officer was sufficient to prove beyond reasonable doubt that the Appellant committed the offence of defilement, this Court does not agree that it was necessary to have the brother testify.

46. The upshot of the foregoing is that the Court finds that the prosecution proved their case of Defilement against the Appellant beyond reasonable doubt.

#### ***Sentence***

47. Although the Prosecution submitted on sentence, this Court observes that none of the Appellant's grounds of appeal address the issue of sentencing and neither did he submit on the same. There would thus be no basis to consider this issue. This notwithstanding, the penalty section for the offence of defilement under the Sexual Offences Act is categorized according to the ages of the child. Section 8 (2) 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.***

48. The accused herein was however sentenced for 30 years imprisonment despite the age of the child being 8 years. The Prosecution submitted that the sentence was in fact lenient and the trial Court considered mitigation and the age of the victim. This Court agrees that the sentence was in fact lenient but this Court will not disturb the finding of the Court on sentencing.

#### ***Conclusion***

49. The complainant, a young girl of 8 years of age who was familiar with the Appellant, who was confirmed to be their neighbor, testified to have been tricked by the Appellant to accompany him to the shop, only for him to turn against her and defile her. She testified of how the Appellant led her into a thicket, blocked her mouth, removed her clothes and defiled her. Her evidence was corroborated by her father's testimony who confirmed that the complainant narrated to him how she had been defiled by the Appellant

50. and that he had come home to find the complainant with grass on her head and clothes. The unchallenged expert evidence of the clinical officer who examined the child confirmed that she had a bruised hymen and a reddened vagina with a foul smelling discharge, thereby confirming the act of defilement. The Appellant opted to remain silent in his defence which although cannot in itself be used against him, it does not work in his favour on the issue he raises in the appeal.

51. This Court finds that a weighing of the evidence adduced by the Prosecution and the Defence as a whole establishes all the elements of the offence of defilement beyond reasonable doubt, and the charge of defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act against the Appellant was proven. Although the sentence meted out by the trial Court was below that prescribed for by the Act, this Court finds no reason to disturb the finding of the trial Court because the issue has not been urged before the Court, as there was no cross-appeal for enhancement of sentence.

**ORDERS**

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

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

*Order accordingly.*

**DATED AND DELIVERED ON THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances**

**Royford Murangiri, the Appellant in person.**

**Ms B. Nandwa, Prosecution Counsel for the Respondent.**