



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL APPEAL NO 62 OF 2018**

**MICHAEL NGUGI KIERERU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**Appeal from original Conviction and Sentence in Nanyuki CM**

**Sexual Offence No 3 of 2016 – E Ngigi, SRM)**

**J U D G M E N T**

1. The Appellant, **MICHAEL NGUGI KIERERU**, was convicted of **defilement of a child** contrary to **section 8(1) & (4)** of the **Sexual Offences Act, 2006**. It was alleged in the particulars that on 16/11/2015 at Likii area in Laikipia County, he intentionally and unlawfully caused his penis to penetrate the vagina of one PZM, a girl aged 17 years. He was sentenced to serve fifteen (15) years imprisonment. He appealed against both conviction and sentence.

2. Learned counsel for the Respondent does not support the conviction upon the following grounds-

- i) That penetration was not proved to the required standard.
- ii) That the conduct of the complainant made her an unreliable witness.
- iii) That the trial court did not make a finding that it believed the complainant.
- iv) That the available evidence indicated a strong doubt that the Appellant was the perpetrator, if indeed there was defilement.

3. I have read through the record of the trial court. The complainant testified that she was lured by a sister of the Appellant (she had not known the Appellant before) and another woman under promise of getting her a job, and was delivered to the house of the Appellant where she stayed for about 2 months and had sexual intercourse once with him.

4. The complainant's testimony however, also indicated that she herself chose voluntarily to stay in that house; that she was not being held in captivity; that she had numerous opportunities to go away and report to authorities but she did not do so; and that at one point she visited the local chief's office but returned to the Appellant's house when she did not get assistance. It must be borne in mind that the complainant was not a child of tender years; she was 17 years old and only a year short of adulthood.

5. The complainant said that the Appellant had sex with her only once, on the very first night that she was taken to his house. She did not say that there were attempts to defile her on other occasions that did not succeed. As already pointed out, she could have walked away at any time. What did she stay there two months for?

6. The complainant was medically examined a week after the alleged defilement. The only significant finding of the doctor was that she had no hymen. The doctor however did not state that the hymen was freshly ruptured. There was no medical evidence of recent penetration.

7. My own assessment of the evidence placed before the trial court is that there was more to this story than was told. The story as laid out by the prosecution did not add up. At any rate the charge against the Appellant was not proved beyond reasonable doubt. The conviction is not safe.

8. In the result I will allow this appeal in its entirety. The conviction is hereby quashed and the sentence set aside. The Appellant shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 6<sup>TH</sup> DAY OF OCTOBER 2021**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 7TH DAY OF OCTOBER 2021**