**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 34 OF 2019**

**JA.....APPELANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**(Being an appeal against conviction and sentence by Hon. V. J. Yator, Resident Magistrate**

**on 27th June 2014 in Criminal Case No. 3122 of 2012, Republic v Jamal Awadh).**

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

**Background**

1. JA was charged with the offence of incest contrary to Section 20(1) of the Sexual Offences Act No. 3 of 2006. The particulars are that JA on the 24th day of October 2012 at [Particulars Withheld] area in Mombasa District within Coast Province, intentionally and unlawfully caused his penis to penetrate the anus of SO aged 3 years who to his knowledge is his grandson.

2. In the alternative charge, the appellant was also charged with the offence of indecent act with a child contrary to Section 11 of the Sexual Offences Act No. 3 of 2006. Particulars of the offence are that JA on the 24th day of October 2012 at [Particulars Withheld] area in Mombasa District within Coast Province, intentionally touched the buttocks and anus of SO, a child aged 3 years with his penis.

3. The trial magistrate considered the evidence of five prosecution witnesses and the unsworn statement of the appellant and convicted the appellant who was sentenced to serve life imprisonment.

4. The appellant was aggrieved by the conviction and sentence and he preferred the appeal herein on the following amended grounds:-

> 1. That the learned trial magistrate erred in law and fact by convicting the Appellant in a trial where the prosecution introduced new evidence that had not featured in the initial hearing conducted by the preceding magistrate.
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> 2. That the learned trial magistrate erred in law and fact by failing to observe his right to be furnished with witness statement, and thereby violating his right to fair trial under Article 50(2)(j) of the Constitution.
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> 3. That the learned trial magistrate erred in law and fact by failing to see that the evidence of the complainant was not obtained procedurally, a violation of Article 50(4) of the Constitution.
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> 4. That the trial magistrate erred in law and in fact by failing to see that the prosecution evidence had fallen short of the threshold to sustain conviction.

5. The appellant prayed that the appeal be allowed, conviction quashed and sentence set aside. This appeal was canvassed by way of written submissions.

**Appellant's Case**

6. PWI, RAH, the mother to the complainant said that his son was born on 26.8.2009 according to the clinic card which she produced in

court (MFI '1'). PW1 stated that on 24.10.2012, she was at home building her house when some young men brought her sand, but later the police came saying that the sand was stolen. PW1 said she took her son and ran to the accused's house who is the step father of her husband. PW1 said she met the accused with his wife and left the child with them. His wife left the complainant with one of her sons and went to PW1's house to see what the police had done. At 12.00pm, the accused went to PW1's home and told his wife that he had left the children alone and was headed to town. His wife left PW1's home. Later, the wife of the accused took the child to PW1 but the child was weak and not talking. On checking the baby's behind, there was blood and some liquid. PW1's aunt took the complainant to Changamwe Police Station. Later, the baby was taken to Makadara District Hospital where he was admitted. PW1 was given a P3 form (MFI '2') at the police station. PW1 talked to her son at the hospital who told her that the accused had sodomised him. PW1 said that the accused was later arrested at Changamwe as he had disappeared from home. The accused is the step father to PW1's husband and he is also called baba H.

7. PW2, SO the complainant gave an unsworn statement and said that he knows the accused as H's father who sodomised him, pointing to the anus. The complainant said that the accused used his thing to sodomise him in his home and that H was present when the complainant put his thing in the complainant's anus. PW2 said the thing is used for urinating and he identified the accused in the dock by pointing at him.

8. PW3, Aziza Mwalimu said that on 24.10.2012 when PW1 went to her home as there were police officers. PW3 said that the accused went and talked to his wife and shortly thereafter, his wife left saying the accused had gone to town. The accused's wife saw blood and some liquid on the anus of the baby. PW3 took the baby to the police station and Makadara Hospital where the complainant was admitted. PW3 was given a letter to take to the OCS Changamwe. The accused is before court and a neighbor to PW3. The accused's wife said J had defiled her grandson.

9. PW4, Dr. Lawrence Ngone based at Coast General Provincial Hospital said he fills P3 on behalf of the hospital. PW4 said that he had the P3 form for the complainant who was 3 years old in the year 2012. He had allegations of being sexually assaulted by a person known to him on 24.10.2012. PW4 said that the complainant was taken to hospital on the same day he was defiled and was seen by PRC form xxxxx. The complainant was seen to have lacerations at his anal region which was bleeding, a rectal swap did not reveal any spermatozoa but only revealed red blood cells, and he was syphilis and hepatitis negative. No other physical injuries were found on his body. PW4 said the complainant was sodomised and the injuries were fresh. PW4 signed the P3 form on 29.10.2012 and produced it as exhibit MFI-'2' and the PRC form was also used to examine the patient and produced at exhibit 2 'a'.

10. PW5, No. 66543 Police Corporal William Kapkoros attached at Changamwe Police Station at the time. PW5 said that on 29.10.2012, a report was made at the station about the complainant having been defiled by her father. The P3 form was filled and witness statements were taken. PW5 then escorted the complainant to Coast General Provincial Hospital where the age was assessed as per the clinic card the mother had given. The child was confirmed to be 3 years. PW5 arrested the accused on 30.9.2012. PW5 said the mother of the complainant led him to the accused. PW5 said that the accused was before court and pointed at him.

**Respondent's Case**

11. The accused, JA said that on 24.10.2012 he went to Bamburi area for work and while there he received a message from the complainant's father saying that he will kill him and his children. DWI went and reported the same to Makupa Police Station but he was told to go to Changamwe Police Station where he lives. On 24.10.2012, he wrote his statement and gave the phone to look at the message he had received. On 29.10.2012, he was told the inspector handling his case was not there. On 30.10.2012, he was given an OB number and on 30.10.2012, he was arrested. DW1 stated that on 24.10.2012, the complainant's mother had gone to his house saying the police were looking for her because of some illegal things she had bought. DW1's wife and the complainant's mother left and went to the complainant's mother's house. DWI said that he went to where they were and found that they had a family meeting. DW1 told his wife that he was leaving because the children were almost going for lunch and he had to look for money.

**Appellant's Submissions**

12. The Appellant submits on the evidence incompatible with the charge sheet that the trial court failed to accord him a fair trial, as it was very unclear which of the said charge sheets or list of witnesses was relied upon to convict him. The Appellant further submits that the trial court had a duty to ensure that the said confusion I unraveled before it could convict. The Appellant relied on the case of *Hamisi Bakari & Another v Rep* [1987] eKLR where the court held that, *"We would note that where a heavy minimum sentence is involved, the lower court should be particular to see that each ingredient in that charge is reflected in the particulars of the offence is properly proved. Seven years is a long time to serve in a case where issues are not clear."*

13. The Appellant submits on witness statements withheld that the initial hearing that involved three prosecution witnesses, in which a substituted charge sheet was presented before court, the Appellant was subjected to taking of that evidence without the statements of those witnesses. The Appellant submits that when the matter came up for hearing on 30.11.2013, the Appellant declined to proceed without witness statements and the court made an order that the same be furnished to him. The said witness statements were never supplied until the Appellant was convicted and sentenced to life imprisonment. The Appellant quoted Article 50 of the Constitution which provides that, *'Every accused person has the right to a fair trial which includes- (j) to be informed in advance of the evidence that the prosecution intends to rely on and to have reasonable access to that evidence.'* The Appellant cited the case of *Joseph Amos Owino v Republic*, Court of Appeal Criminal Case No. 450 of 2017, where the learned appellate judges of the court of appeal held that *"the appellant may not have been aware of his constitutional rights as an advocate would hence he relied wholly on the court to ensure that compliance with such rights by the prosecution… The trial court and the first appellate court in the exercise of the jurisdiction should hence on their own ensure that the constitutional rights of the appellant were fully complied with, notwithstanding that the appellant did not raise the same."*

14. The Appellant submits the complainant's evidence obtained unprocedurally that the complainant himself despite being of tender years did not on his own volition open up to his mother until he was taken to hospital. The appellant submits that this casts doubt as to the truthfulness of the prosecution witnesses and that the evidence was obtained in a manner that was prejudicial contrary to Article 50 (4) of the Constitution. The Appellant further submits that 'H' who was present when the said crime was committed ought to have testified to support

the allegations but the prosecution never called and the trial magistrate came up with a conviction devoid the crucial evidence that was withheld by the prosecution.

15. The Appellant submits on excessive sentence that the court should proceed to review his sentence which he considers very harsh and excessive. The Appellant cited the case of *Nyawa Dongoi Mvuria v Republic*, High Court Criminal App No. 39 of 2019 at Mombasa in which the Appellant had been convicted for two counts of incest and his life sentence were substituted with ten (10) years to run concurrently. It is for this reason that the Appellant prays that the conviction is quashed and the sentence set aside.

**Respondent's Submissions**

16. The Respondent submits that they do not support the conviction and sentence at the trial court since the section under which the Appellant was convicted was improper since the victim was not a female person. However the evidence led was cogent, consistent and uncontroverted evidence thereby meeting the required threshold of proof beyond reasonable doubt for the offence of defilement.

17. The Respondent submits by quoting Section 20 (1) of the SOA which provides that, *'Any male person who commits an indecent act or an act which causes penetration with a female person who is to is knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years. Provided that if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.'* The Respondent further submits that the evidence established that the complainant is a male person and therefore does not fall within the above definition.

18. The Respondent submits on conviction based on new evidence introduced by the prosecution in the case that started de novo by citing *John Nduva Mutua v Republic* [2019] eKLR where the court quoted the case of *Kenya Anti-Corruption Commission v Michael K. Gituto* [2015] eKLR which while dealing with de novo hearing cited the case of Kajubo v the State and expressed itself that *"…The consequences of a retrial order or a de novo (a Venire De novo), is an order that the whole case should be retried or tried a new as if no trial whatsoever has been heard in the first place."* The court also stated that, 'Where therefore an accused person requests that a de novo trial starts pursuant to section 200 of the Criminal Procedure Code and that request is granted, the accused takes the risk that the prosecution will have another bite at the cherry and may reframe its case and restructure it as it may deem it appropriate. Where therefore the evidence adduced at the hearing de novo is inconsistent with the evidence adduced in the nullified proceedings, no arty can fall back on the same with a view to impeaching the credibility of the witnesses.' The Respondent submits that in view of the above, the proceedings to be considered during judgment are the fresh proceedings and not the prior proceedings.

19. The Respondent submits on the issue of failure to supply the Appellant with witness statements that on page 15 line 6 of the typed proceedings, the accused confirmed that he was ready to proceed with the trial and never raised the issue of not having statements in the proceedings. This is therefore an afterthought seeking to defeat justice.

20. The Respondent submits on the issue of the minor's evidence not having been obtained procedurally that on page 16 of the typed proceedings, it is clear that *voire dire* was properly conducted and the court held that the minor gives an unsworn statement. Similarly the Appellant was afforded the opportunity to cross examine him.

21. The Respondent submits on the issue of the evidence having fallen short of the threshold to sustain a conviction that the evidence established that the Appellant was PW1's grandfather therefore no error of identification. The act occurred during the day and it was the Appellant who committed the act of penetration. Age of the victim was also proved to be 3 years old.

22. The Respondent submits that the evidence proved the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act beyond reasonable doubt. The said sections provide that, *'(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.'* The Respondent submits that age of the complainant was established by producing the clinic card indicating date of birth as 26th August 2009 therefore the minor was 3 years at the time of the offence. Penetration was proved by production of the PRC and P3 forms which indicated lacerations and rectum bleeding. The child also testified the Appellant had inserted his thing for urinating in his anus and confided in his mother that the Appellant was the perpetrator. It was also established that the accused was the grandfather of the victim therefore well known to each other voiding possibility of mistaken identity. Similarly, the offence occurred during the day hence identity was reliably positive.

23. The Respondent submits by praying that the Honourable Court invokes its powers under Section 354(3) of the Criminal Procedure Code thereby alter the finding and convict the Appellant Defilement Contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act as was the case in *JKM v Republic* [2020] eKLR. The Appellant submits that the accused will suffer no prejudice since the ingredients are similar except for the relationship. Either where the victim is a minor both carry a maximum sentence of life imprisonment.

**Analysis and Determination**

24. This being the first appellate court, I am guided by the principles in **David Njuguna Wairimu v Republic [2010] eKLR** where the court of appeal held:-

> **"The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellant court may, depending on the facts and circumstances of the case, come to the same conclusions as**

**those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions."**

25. After considering the amended grounds of appeal, Records of the trial court, submissions and circumstances of the case, issues for determination are as follows:-

i. Whether the prosecution introduced new evidence that had not featured in the initial hearing

ii. Whether the evidence of the complainant was obtained unprocedurally

iii. Whether failure to supply the Appellant with witness statements violated his right to fair trial

iv. Whether the Appellant was properly convicted for the offence of incest against a male complainant under Section 20(1) of the Sexual Offences Act and whether the court can convict the Appellant for offences not included in the charge sheet.

**Whether the prosecution introduced new evidence that had not featured in the initial hearing**

26. The Appellant in submitting stated that it was very unclear which of the said charge sheets or list of witnesses was relied upon to convict him. However, at page 3 of the typed proceedings, the prosecutor pointed out to court that they had a substituted charge sheet and on page 4 of the proceedings, the charge was read over and explained to the accused who replied it is not true. Therefore, it is evident that court relied on the substituted charge sheet.

27. On page 13 of the proceedings, Hon. Yator (RM) having taken over the matter from Hon. Kimanga (RM) explained to the Appellant the provisions of Section 200 (3) of the Criminal Procedure Code. The Appellant stated to the court that he wished to have the matter start afresh. This connotes trial de novo which means afresh or a new and it is on this basis that the prosecution reorganized its witnesses.

**28. Section 200 (3)** of the **Criminal Procedure Code** provides:-

**'Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.'**

29. In the dictum of Ibrahim Tanko Muhammed, J.S.C in the Nigerian case of ***Babatunde v Pan Atlantic Shipping and Transport Service,*** it was held that:-

**"... plaintiff is given another chance to re-litigate the same matter or rather, in a more general sense the parties are at liberty, once more to reframe their cases and restructure it as each may deem it appropriate."**

**Whether the evidence of the complainant was obtained procedurally**

30. The Appellant submitted that the evidence tabled against him failed to meet the threshold because the complainant was compelled to testify and the matter itself was tried in a manner that was prejudicial to the Appellant. On the contrary, the complainant a minor aged 3 years disclosed to his mother at the hospital that the Appellant was the perpetrator. A page 16 and 17 of the typed proceedings, a *voire dire* examination was conducted on the minor and the court established that the child was intelligent but did not understand the nature of oath. He therefore gave unsworn statement. The complainant went ahead and testified describing what the Appellant had done to him and even pointed at him at the dock. Therefore, evidence by the complainant was proper. The Appellant was grandfather**.**

**Section 125** of the **Evidence Act Cap 80** states as follows:-

**'All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them.'**

31. The Appellant further submitted that H who was present ought to have testified to support the allegations. However, corroboration is not required in sexual offence cases involving children of tender years. **Section 124 of the Evidence Act** provides that:-

**"Provided that where in a criminal case involving a sexual offence the only evidence is that of a child of tender years who is the alleged victim of the offence, the court shall receive the evidence of the child and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the child is telling the truth."**

32. Further to the above, the court in *Mohamed v R* [2008] 1KLR G&F 1175 held that:-

**"It is now well settled that the courts shall no longer be hamstrung by requirements of corroboration where the victim of a sexual offence is a child of tender years if it is satisfied that the child is truthful.**

**Whether failure to supply the Appellant with witness statements violated his right to fair trial**

33 The Appellant stated that he was subjected to taking of evidence of prosecution witnesses without the statements of the witnesses. The Appellant further submitted that when the matter came up for hearing on 30.11.2013, he declined to proceed without witness statements and the court made an order that the same be furnished to him but the said witness statements were never supplied until the Appellant was convicted and sentenced to life imprisonment.

34. In the case of ***Joseph Ndungu Kagiri v. Republic*** **[2016] eKLR,** the court held as follows:-

> **"Article 50(2)(j) correctly interpreted means that an accused person should be furnished with all the witness statements and exhibits which the prosecution intends to rely on in their evidence in advance. The sole purpose of doing so is to avail the accused person sufficient time and facilities to enable him prepare his defence and challenge the prosecution's evidence at the opportune time both in cross-examination and in his defence. This provision must then be read together with Sub-Article 2(c) which provides that every accused person has right to a fair trial which includes the right to have adequate time and facility to prepare a defence.**
>
> **The latter cannot be met if the accused is not furnished with the evidence the prosecution intends to rely on ahead of the trial. If this goal is not met, it means that the court shall be misinterpreting the letter and spirit of the supreme law of the land thereby belittling the Constitution and the very purpose for which it was intended. Courts must therefore be very keen in ensuring that this provision is adequately given regard to so as to ensure that the rights of an accused person are not violated.**

35. The Respondent on the other hand submitted that on page 15 line 6 of the typed proceedings, the accused confirmed that he was ready to proceed with the trial and never raised the issue of not having statements in the proceedings. The Respondent further submitted that this was therefore an afterthought seeking to defeat justice.

36. According to the typed proceedings on 30.1.2013, the appellant person pointed out to court that he was not ready to proceed and needed statements. The trial court ordered for the witness statements to be supplied. On 28.10.2013, the appellant was advised on whether the matter was to proceed or to start afresh under Section 200 (3) of the Criminal Procedure Code and the appellant said he wanted de novo hearing. On 29.11.2013 when the matter came up for hearing, the Appellant stated that he was ready to proceed. There was no complaint that he did not have statements. The Appellant even went ahead and cross examined witnesses. On 12.6.2014, the Appellant gave unsworn statement and did not complain of lack of statements.

37. From the foregoing, this court finds that the Appellant's right to fair trial was not curtailed as when the matter came up for hearing, the Appellant had the opportunity of informing the court that he had not been supplied with witness statements but he stated that he was ready to proceed and went ahead to cross examine the witnesses. The Appellant's active interactions with the court as well as the witnesses makes this court believe that he had adequate time and facilities to prepare his defence and that he was informed in advance of the evidence the prosecution intended to rely on and he cannot now complain on appeal that witness statements were not supplied to him.

**Whether the Appellant was properly convicted for the offence of incest against a male complainant under Section 20(1) of the Sexual Offences Act and whether the court can convict the Appellant for offences not included in the charge sheet**

38. The Appellant was charged and convicted for the offence of incest and sentenced to life imprisonment by the trial court. However, the Respondent having proved the offence beyond reasonable doubt stated that they do not support the conviction and sentence at the trial court since the section under which the Appellant was convicted was improper as the victim was not a female person. The said section is as follows:-

> **Section 20(1)**
>
> **'Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years:**
>
> > **Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.'**

39. The legal provision above does not address incest perpetrated by a male person against a male victim. It only addresses instances where a male person commits an indecent act which causes penetration with a female person. This loophole in the law causes a dilemma in application of the law where the victim of incest is a male person. To this end, it is the position of this court that Section 20(1) of the sexual offences Act was misapplied in sentencing the Appellant.

40. That notwithstanding, the law does not operate in vain and as such, stopgap measures have equally been put in place and captured in statutory provisions which seek to cure any defects and mishaps in the course of criminal justice. The conundrum with which this court is faced is that of a non-existent offence that was preferred as a charge and subsequently used in convicting the Appellant. This amounted to a defective charge. Ideally, the test to which defective charges are usually placed is a substantive one. This means the courts will test, examine and interrogate the nature of the defect and determine whether such defect led to the occasioning of substantive injustice. In determining substantive justice or injustice, one identifies the crux of the matter being dealt with and establishes whether the main objective of the matter has been achieved albeit with some discrepancies. We are therefore left with the objective that the charge and the charge sheet seek to achieve.

41. The above position was further expounded in the case of ***JKM v Republic*** **[2020] eKLR,** where the court held:-

> **'The complainant is a male person and does not fall within the above category listed in Section 20(1). Section 20(1) is clear that, a male person must commit the incest with a female relative. There is no provision in the Sexual Offences Act where a male is deemed to commit incest with male relative. An offence of incest was not disclosed as no such offence exists under Section 20(1) of the Sexual Offences Act. I hereby acquit accused of the said offence as charged. The evidence in record however, discloses an offence of defilement under Section 8(1) as read with Section 8(2) of the Sexual Offences Act. The trial court committed a serious error in convicting and sentencing the appellant under Section 20(1) of the Sexual Offences Act. I however, find the appellant guilty of the offence of defilement contrary to Section 8(1) as read with Section (2) of the Sexual Offences Act.**
>
> **The appellant will not suffer any prejudice because the sentence under Section 20 of the Sexual Offences Act is similar to the sentence under Section 8(1) and (2) that is, life imprisonment.**
>
> **I have considered the fact that the appellant behaved like a beast. The complainant, is a young boy of tender age, his own son upon whom he inflicted serious injuries by his bestial acts. Instead of being his protector, he was the molester until the young boy had to ran for his life and find refuge in the bathroom. He does not deserve mercy. I sentence him to serve 30 years imprisonment under Section 8(2) of the Sexual Offences Act. The sentence will run from the date the appellant was sentenced on 26/10/2018.'**

42. On conviction for an offence other than the one preferred in the charge sheet, powers of the High Court in first appeals under **Section 354** (3) (a) (ii) of the **Criminal Procedure Code** states that, **'in appeals against conviction, the H.C may alter the finding and maintain the sentence or alter the nature of the sentence.'** However, **Section 179 to 190** of the **Criminal Procedure Code** for conviction of offences other than those charged, should not be derogatory to any other law or cause prejudice on the same. The provision should be used in addition to the specific laws creating the respective offences.

43. The issue of substituting an offence with the one for which the evidence is established is not an obvious case. The offence substituted must be cognate and minor to the offence that the accused was initially charged with. This was the holding in the case of ***David Mwangi Njoroge v Republic*** **[2015] eKLR**.

44. In consideration of the holding in David Mwangi Njoroge V. Republic and in consideration of section 179 – 190 of the Criminal Procedure Code, this court finds that it is not lawful to convict the Appellant for the offence of defilement for which he was not tried in the trial court. The cognate and minor offence to the offence of incest under section 20 (1) of the Sexual Offence Act, 2006 is indecent act with a child under section 11 (1) of the Sexual Offences Act, 2006 which was the alternative charge against the Appellant. The Appellant is therefore found guilty and convicted in the alternative charge and sentenced to serve 15 years imprisonment from 27th June, 2014 when the trial court passed the sentence against him.

45. In conclusion, the Appellant's appeal succeeds to the extent that the conviction and sentence for the offence of incest contrary to section 20 (1) of the Sexual Offences Act, No 3 of 2006 is quashed and sentence set aside. In lieu thereof, he is convicted for the offence of indecent act in the alternative count and sentenced to serve 15 years imprisonment.

46. Orders accordingly. The Appellant has 14 days right of appeal.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS 12TH DAY OF NOVEMBER, 2021**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:-**

Ogwel- Court Assistant

Mr. Mulamula for Respondent

Appellant present in person

**Hon. Lady Justice A. Ong'injo**

**Judge**