REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. E022 OF 2020

LM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction of the Senior Resident Magistrate's Court

at Nkubu in Criminal Case No. 24 of 2019 delivered on 26th October 2020

by Hon. E. Ayuka SRM)

JUDGMENT

1. LM, 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.' The particulars of offence for his charge were that: -

> ***'On the 17th day of July 2019, at [Particulars Withheld] Village, Igoji Area in Imenti South Sub-county, intentionally and unlawfully caused his penis to penetrate the vagina of JM a girl aged 4 1/2 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 17th day of July 2019, at [Particulars Withheld] Village, Igoji Area in Imenti South Sub-county, intentionally and unlawfully touched the vagina of JM a girl aged 4 1/2 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 Sexual Offence Act No. 3 of 2006 and thereafter sentenced to thirty (30) years imprisonment by Hon. E. Ayuka (SRM).

The Appeal

4. Being dissatisfied with the conviction and sentence of the trial Court, he has lodged the instant appeal raising the following grounds of appeal: -

> ***i) That the learned trial magistrate erred in both matters of law and facts by failing to note that a broken hymen is not proof of defilement.***
>
> ***ii) That the learned trial magistrate erred in both matters of law and facts by relying on the evidence of PW1 alone without noting that there was a grudge between the two brothers.***
>
> ***iii) That the learned magistrate erred in both matters of law and facts by failing to take into account the defence of the Appellant and his defence witnesses.***

Appellant's Submissions

5. The appeal was canvassed by way of written submissions. The Appellant filed submissions on 29th July 2021. Citing the case of *P. K. W vs Republic* wherein the Canadian case of *The Queen vs Manuel Vincent Quintanila* (1999) AB QB 769, he urges that a broken hymen is not proof of penetration. He urges that no blood was seen and no severe bruises were seen in the child's genitalia and that breaking of a hymen is an agonizing experience and after the ordeal, there ought to have been an indication of forceful penetration. He urges that Part A of the PRC form indicates that a report was made that the complainant was undressed by her grandfather who 'attempted' to insert his penis into her genitals. He thus urges that this was an attempt case because no blood or bruises were seen in the child's genitalia. He also urges that the complainant's clothes were not changed. He urges that the clinical officer indicated that the complainant had a history of being done *'tabia mbaya'* but there was no evidence to show that it was not the first time the Appellant defiled her, noting that the complainant lived with her father alone. He urges that he is an old man and yet the complainant is aged 4 ½ years and if he had defiled her, there ought to have been damages in the genitalia or presence of blood. He further urges that there was no indication that the complainant had difficulty in walking. He urges that an inflamed outer genital is not proof of defilement as the same could be caused by other factors such as vulva vestibulitis, vulvodynia and this can happen to women of all ages. That vaginitis, the inflammation of the vagina which is accompanied by swelling of the vagina is caused by infection and can also be cause by douches, soaps or fragranced products like pads or tampons.

6. He urges that the trial Court failed to take into consideration his defence which was strong since he called his children to prove that he was at his house during the time of the alleged defilement. He urges that the Prosecution did not ask any questions to shake his defence.

7. He urges that the Prosecution failed to prove their case beyond reasonable doubt.

Respondent's Submissions

8. The Respondent filed submissions dated 15th September 2021. They urge that to secure a conviction on a charge of defilement, the prosecution must prove all the three elements of defilement as set out in Section 8 (2) of the Sexual Offences Act. Citing the case of *George Opondo Olunga v Republic* (2016) eKLR they urge that the ingredients of an offence of defilement are identification or recognition of the offender, penetration and the age of the victim. They cite the case of *Kaingu Elias Kasomo v Republic* (2010) eKLR and *Hadson Ali Mwachongo vs Republic* (2016) eKLR for the importance of proving the age of a victim in a case of defilement. They urge that they proved that the victim was 4 years old at the time of the incident as PW2 testified that the complainant was born on 3rd October 2014 and he produced the child's birth certificate to confirm the date of birth. They cite the case of *Joseph Kiet Seet vs Republic* (2014) eKLR and *Francis Omuroni vs Uganda*, Criminal Appeal No. 2 of 2000 (2002) E.A 531 (SCU) for the proposition that the age of a victim should be determined by medical evidence or other cogent evidence including a birth certificate.

9. They urge that the meaning of penetration as per Section 2 (1) of the Sexual Offences Act is the 'partial or complete insertion of the genital organs of a person into the genital organs of another person.' They urge that the trial Court believed the evidence of PW1 as truthful and honest, that she had recognized the assailant and that she conceived a child as a result of being defiled by the Appellant. They cite the case of *J.W.A vs Republic* (2014) eKLR for the proposition that the proviso to Section 124 of the Evidence Act states that corroboration is not mandatory. They further cite the case of *Mohamed vs Republic* (2006) 2 KLR 138. They urge that the trial Court noted that PW1 was very categorical and firm in her testimony that at the material time and date, there was no one else at home when the incident took place. They urge that in her witness statement, PW1 stated that at the material time, there was no one else at home, that the Appellant undressed her and did *'tabia mbaya'* to her. They urge that in Court, PW1 testified that the Appellant defiled her on his bed and that she pointed her private parts. Citing *Too vs Republic* (2020) eKLR and *Daniel Arasa vs Republic* (2014) eKLR, they urge that *'tabia mbaya'* is a euphemism which PW1 used to mean defilement.

10. They urge that PW3, the clinician who examined the complainant observed that her hymen was broken with hyperemic tender valve and that this evidence was corroborated by the production of treatment notes, lab results, PRC form and P3 form.

11. On identification, they cite *Anjonini & Others vs Republic* (1989) KLR for the proposition that recognition of an assailant is more satisfactory than identification of a stranger. They urge that PW1 stated that she knew the Appellant and that the accused is her grandfather. They urge that the incident took place in broad daylight. They further urge that PW1 stated that she told her father what the Appellant did to her and that PW2 who stated that PW1 told her that the Appellant took her to his bed and defiled her corroborates PW1's testimony. That the evidence on record confirms that the Appellant's home and PW1's home are nearby. That PW1 was very categorical in her evidence that the Appellant took her to his bed where he undressed her and also removed her clothes and did *'tabia mbaya'* to her.

Evidence adduced at trial Court

12. 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, 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.*** The evidence adduced at the trial Court is reproduced hereunder.

Prosecution's Case

PW 1

13. PW1, after going through a voire dire testified as follows: -

> ***"Am JM. We live at [Particulars Withheld]. I am a pupil at [Particulars Withheld]. Am in class PP2. My father is JG. My Grandfather is called L. He is the one before court. The accused undressed me and did tabia mbaya to me. I was in stocking and pants. We were on the accused's bed. He did tabia mbaya to me on my private parts. (She points to her private parts.) There was no one else at home. I told my father what had happened. He took me to hospital. I was treated. I was injected. I was also taken to the police station."***

Cross Examination

There was no one else at the moment. Gatwiri was not present. I took the keys to Gatwiri,

PW 2

14. PW2 testified as follows: -

> ***"I am JG. I stay at [Particulars Withheld]. Am a shamba boy. The complainant is my daughter. She is 5 years old. I have a birth certificate. She was born on 3/10/14. The accused is my uncle. On 17/7/19, I took the child to school. We were turned back for school fees I left the child at home and went to look for money. I got some casual job. My brother's wife called me and told me that she had left and the children were left behind at home. The children went to the accused's home. When I went back to home, the complainant told me that the accused had taken her to his bed, undressed her and he also undressed and then defiled her. I then reported the case to the police station - Igoji. A police officer escorted the child to hospital - Kanyakine with me. She was treated. Her P3 form was also filled up at Kanyakine sub county hospital. These are the complainant's treatment card, Lab tests-results - PMFI 3 PRCFP. MFI 4 P.3 form P.MFI 5. I recorded a witness statement. The complainant also recorded her witness statement at the Igoji police station"***
>
> ***Cross examination***
>
> ***"I reported the case at the police station. I found the children at home alone. You were also at home alone."***

PW 3

15. PW3 testified as follows: -

> ***"I am Moses Baiyenia, a clinical officer at Kanyakine Sub County Hospital. I have a P3 form for JM aged 4 ½ years old at the time of exam. The complaint had a history of being done "tabia mbaya" by someone known to her on the 17/7/2019 at about 7 p.m. She was presented to the hospital a few hours after the incident. On examination, her hymen was broken with hypheremic tender valve, there was no discharge noted. Lab tests were done. Urinalysis – normal. HIV negative. Syphilis negative. The patient was given appropriate drugs. I concluded that the broken hymen and hyperemic valve were highly suggestive of a very recent probable vaginal penetration. I also have the O/P treatment card and the lab results and PRC form. I wish to produce then all in evidence. Treatment notes - P. Exhibit 2 PRC form P. Exhibit 4 P.3 Form P exhibit 5 Lab results P. Exhibit 3."***
>
> ***Cross Examination***
>
> ***"I am not certain if you were medically examined. I do not know when you were arrested. The complainant was examined. It was revealed that she had been defiled. I do not know the perpetrator."***
>
> ***PW 2 (Recalled)***

16. PW2 was recalled for purpose of further cross examination. He testified as follows: -

> ***"I am JG. I stay at [Particulars Withheld]. Am a shamba boy. The complainant is my daughter. The accused is my uncle. On 4/9/2019 1 testified before court.***
>
> ***I have not framed you in the case. The complainant is too young to frame you up. I have not coached the child. The child already testified before court."***

PW 4

17. PW4 testified as follows: -

> ***"I am No. 237174 Inspector John Kianga attached to Igoji Police station. I am in charge of crime. I am the investigating officer. It was handed to me by PC Margaret who proceeded on transfer to Nairobi. I worked with her for six (6) months. On 17/7/2019 at about 2.45 p.m I got a phone call from PC Margaret who narrated to me that she had been informed by PC Ngetich that there was a complainant aged 4 years old escorted by her father. That she reported that she had been defiled by someone known to her. I explained to PC Margaret to escort the complainant to Kanyakine Sub County hospital for medical attention. The initial investigating officer recorded a statement for the complainant. She narrated that she was from school at about 2 p.m and went back home that there was no one at home. That she was called by the accused who took her to his house where he undressed her and also removed his clothes. That he lay on the bed and lay on her. That he inserted his genital organs into her genitalia. That the accused did 'tabia mbaya' to her. That the accused then told the complainant not to tell anyone what happened. That she then dressed up and went out of the house. When the complainant's father returned she narrated to her what had happened. The case was then reported at the police station. On 22/7/2019, I and other officers went to the accused's home to effect arrest, he was at a neighbour's home. The complainant and her father identified the accused and we arrested him. The accused was charged in court. The complainant has a birth certificate and was born on the 3/10/2014. I have it before court B/Certificate produced as P. Exhibit 1. We arrested the accused at about 500 metres from his home. The accused is before court."***

Cross examination

"The complainant implicated you in the offence. From the report made at the police station the complainant and her father said its you who defiled her. The doctor on assessment of the complainant stated she had been defiled. There lapsed time between the incident and your arrest. Officers had attempted to arrest the accused earlier on but the accused was not at his home. Even on the date of your arrest you were not at your home. We arrested you in some other home about 500 metres away."

Defence Hearing

DW1

18. DW 1 testified as follows: -

"I am LMN. I stay at Igoji. I am a secutiry guard. I wish to state that the case is a falsehood. I have had a grudge with the father of JG. My brother JN and JG had even poisoned me. They put poison in drinking water. They also threatened and vowed that I shall become bankrupt. The case is a falsehood. They also poisoned all my goats and they died; even cows my cows died. On 17/7/2019, it was at about 9 a.m I had left work and went home. I met my daughter Gatwiri and son Muriuki. My daughter prepared for me breakfast. I then slept. At 3.pm I woke up and went to my place of work. I did not know what had transpired. On 22/7/2019 I went to work at the market. That's when I was arrested by police who were accompanied by JG. I was then arrested. I was later charged before court. I did not commit the offence. I never defiled the complainant. On 17/7/2019, I was not alone at home. I could not have defiled the complainant. The case is a frame up.

Cross examination

"The complainant is my grandchild. There's a distance of about 100 metres from my home to her home. She lives with her father. The poison was done in 1995. The goats were poisoned in 2010. They were killed by father to JG. On 17/7/2019 1 was with Gatwiri and Muriuki at home."

DW 2

19. DW2 testified as follows: -

"I am Annerita Gatwiri Murungi. I stay at Kieni Kia Ndege. I know the accused. He is my father. I wish to state that on 17/7/2019, I was at home the whole day. The accused is a watchman. He usually comes home in the morning. The accused was only arrested on 22/7/2019. On the material day I was with the accused at home. I had seen the complainant at her home. She did not look like she had any problem. Father to JG vowed to teach our family a lesson. The two families have had perennial grudges. They had even poisoned us and our livestock. That's all."

Cross examination

"The incident occurred on 17/7/2019, I was home with the accused and my brother. The accused came home at 9.00 a.m. I know the complainant. Her home is a little distance away about 50-100 metres. I saw the complainant playing in the evening on the material day."

DW 3

20. DW3 testified as follows: -

"I am Amos Muriuki. I stay at Geeto. Am a casual worker/farmer. I know the accused. He is my father. I wish to state that from the date the accused was arrested I followed up the case. On the date it is alleged he defiled the complainant I was at home with the accused. The police did not tell us why the accused had been arrested. The father to the complainant is my cousin. He lives with the complainant alone. They sleep in the same house. The mother is away. On 17/7/2019 I was at home with accused. I did not witness the offence. The family of the complainant and our family have had grudges since time immemorial. They at one point poisoned us. The case is a frame up. That's all"

Cross examination

"On 17/7/2019 1 was at home with the accused. He was arrested on 22/7/2019. The accused is a watchman. He comes back home in the morning. The accused left home at 3 p.m for his place of work. On the date of arrest I was with the accused where we were doing a casual job. We do not live in the same homestead with the complainant's family. Our homes are a bit far apart. Accused - That marks the close of the defence case."

Issues for Determination

21. The Appellant's grounds of Appeal and submissions address the single issue of conviction. The issue for determination can thus be condensed into one main issue: -

i) Whether the Prosecution proved their case beyond reasonable doubt.

Determination

i) Whether the Prosecution proved their case beyond reasonable doubt.

22. In a charge for defilement, the Prosecution is required to prove the age of the complainant, the act of penetration and the linkage of the act to the accused person.

Age of the Complainant

23. With respect to the age of the complainant, this was not contested. The Prosecution produced a birth certificate for the complainant which indicates that she was born on 3rd October 2014. This means that at the time of the offence, on 17th July 2019, the complainant was 4 years and 8 months old. A person of this age is a child within the meaning of a child both under the Sexual Offences Act and the Children's Act.

Identification

24. During hearing, the complainant was able to identify the Appellant as her assailant. She also testified to have known the Appellant as her grandfather. This fact was not disputed. In addition, she confirmed that the Appellant is their neighbour, which fact was confirmed by the Appellant himself. Their homes are a distance of 100 meters apart. The Appellant 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."***

25. 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

26. On penetration, the complainant had the following to say during examination in chief: -

> ***"The accused undressed me and did tabia mbaya to me. I was in stocking and pants. We were on the accused's bed. He did tabia mbaya to me on my private parts. (She points to her private parts.) There was no one else at home. I told my father what had happened. He took me to hospital. I was treated. I was injected. I was also taken to the police station."***

27. This Court has analyzed the complainant's evidence and finds that it was consistent. She went to the extent of pointing at her private parts during hearing and she was able to describe the clothes she had on. Her evidence was corroborated by PW2, the complainant's father, who confirmed that he had left the child home to go and work, was phoned by his sister in law to inform him that she had left the house and that upon his return, the complainant narrated to him that she had been defiled by the Appellant.

28. The complainant used the term *tabia mbaya* to describe the act that was done to her by the Appellant. To this Court's mind, the phrase *tabia mbaya* was used to describe the act of sexual intercourse. The use of other terms other than the technical, scientific and legal ones to describe the act of sexual intercourse by children was discussed by the Court of Appeal in ***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.***

29. The complainant's evidence of penetration was corroborated by that of PW3, the clinician, who testified that upon examination, he observed that her hymen was broken with hypheremic tender valve. The complainant urges that his was a case of attempt. The Court has perused the treatment notes from Kanyakine District Hospital which reads in part as follows: -

> ***'It is reported that the father left her in the house in the morning when he went for his hustles later he came back and the daughter reported to him that her grandfather removed her clothes and attempted to insert his penis into her vagina. She reports to have experienced pain but no evidence of ejaculation or use of protection.'***

30. The Court considers that the term *'attempt'* as used in the above report is not used as a technical term within the meaning assigned to it under Section 388 of the Penal Code. The term was used to describe how the act happened. In fact, the report shows that the complainant said that she felt pain. This indication, coupled with the medical evidence of a broken hymen and a hyperemic tender valve proves penetration. This Court further considers that for penetration to occur, it matters not the extent of penetration. The mere fact of insertion of the penis is enough to sustain a conviction. Under Section 2 of the Sexual Offence Act, penetration is defined as follows: -

> ***"means the partial or complete insertion of the genital organ of a person into the genital organs of another person."***

31. The Court, therefore, finds that penetration was proven. I respectfully agree with the finding of R. Wendoh J in ***Festus Otieno v Republic*** [2021] eKLR where she held as follows: -

> ***"it is clear that penetration does not need to be complete. Even if the act is only partial, it still amounts to penetration under the Act."***

32. The Appellant contends that the fact of a broken hymen is not conclusive proof of penetration. Whilst this is true, the Court considers that there is other evidence linking the Appellant to the offence. The fact that the complainant was able to walk after the incident is also not reason to doubt her evidence.

33. The Court also rejects the Appellant's argument that there was no evidence to prove that the complainant had been defiled previously. The Court considers that term 'history' as used by the clinician did not imply that the complainant had been defiled on other occasions before the present incident. Instead, the same is a technical term used to indicate the events that led to the complainant's examination i.e the particulars of the offence of the charge against the Appellant.

Appellant's Defence

34. The Court has also considered the Appellant's defence that he was at home with his children on the material day. Despite this assertion, the complainant testified during cross-examination that there was no one else at the Appellant's home on the material day. The Court finds that the positive identification of the Appellant and the medical evidence of broken hymen and hyperemic vulva and tenderness on the vulva outweighs the narrative the Appellant tried to advance that he was at home on the material day with his children. The Court has also considered that the attempts to arrest the Appellant proved futile as he was not in his home and was only arrested 5 days later, on 22nd July 2019.

35. As to the alleged grudge between him and the complainant's family, the Court observes that no reason was advanced to prove the existence of this purported grudge. The Appellant did not attempt to give a general nature of this grudge. Him and his witnesses merely made reference to an alleged poison done in 1995 without giving any motives for the alleged poisoning. This Court does not find that the allegation of a grudge was supported by enough evidence to cast doubt on the Prosecution's case.

36. In criminal trials, the Court is allowed to weigh the evidence in support of an accused person's defence against the evidence of the Prosecution. I respectfully agree with the finding of Madan, Miller & Potter JJA in ***Wang'ombe vs The Republic*** (1980) KLR 149, where they held as follows: -

> ***"The alibi was considered by both courts below, the High Court saying (as we have already set out) that it needed to be weighed with the evidence of the prosecution, particularly that of the complainant and his wife, and the fact that the appellant denied knowing Lucy, and particularly with Lucy's evidence.***
>
> ***To weight one set of evidence with another set of evidence is not to remove the burden of proving that which has to be proved from the party charged with the proof of it. To marshal, analyse and dissect evidence in order to weigh it to determine its value and veracity is a basic function of judicial officers…"***

37. Although the above was discussed within the context of an *alibi* defence, this Court finds that the same reasoning applies irrespective of the nature of the defence.

38. It is also a cardinal principle that in criminal trials, the Court has a duty to look at the evidence as a whole. This principle was discussed by the Court of Appeal in ***Ndege Maragwa vs Republic*** (1965) EACA which was cited with approval in ***Okethi Okale & Others vs Republic***, Criminal Appeal No. 179 of 1964 (1965) EA, 555, 559 as follows: -

> ***"…In our view, it is the duty of the trial judge, both when he sums up to the assessors and when he gives judgment, to look at the evidence as a whole…"***

39. This Court thus finds that a weighing of the evidence as whole confirms that all the elements necessary for the offence of Defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act were proven beyond reasonable doubt against the Appellant.

Conclusion

40. On 17th July 2019, the complainant, who was at the time 4 years and 8 months old was left at home as her father went to look for work, to get their daily bread. On the same day, the complainant went to the Appellant's home, and it is during this occasion that the Appellant defiled her. The Court considers that the Appellant and the complainant are grandfather and granddaughter respectively and the Appellant

was thus well known to her. Further, they were neighbours, said to be living a distance of 100 metres apart. The incident occurred during the day, thus it was easy for the complainant to identify the Appellant. The Court, therefore, finds that the complainant's identification of the Appellant as her assailant was positive.

41. The Court also considers that there was medical evidence to confirm that upon examination of the complainant, the clinician observed a broken hymen and hyperemic vulva and tenderness on the vulva. All these are indicative of penetration. The Court rejects the Appellant's contention that his was a case of attempted defilement, because medical the evidence adduced reveals otherwise. The Court also considers that in defilement cases and as per the definition of defilement under Section 2 of the Sexual Offences Act, penetration does not have to be complete. It, therefore, matters not that the penetration was not complete.

42. The Court rejects the Appellant's defence that the case was framed against him, because he failed to outline the factual basis upon which this allegation was founded. The Court has also considered that the Appellant went hiding after the incident and attempts to arrest him proved futile until 22nd July 2019, 5 days later. The investigating officer also testified that he was arrested 500 metres from his home. These facts add weight to the Prosecution's case.

43. The Court, therefore, finds that the charge of Defilement contrary to Section 8 (1) as read with Section (2) of the Sexual Offences Act was proven beyond reasonable doubt against the Appellant.

44. The Appellant did not raise any issue with the sentence and the Court observes that he in fact got a lenient sentence. The Court will thus not disturb the finding of the trial Court on sentencing.

ORDERS

45. Accordingly, this Court makes the following orders:

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

Order accordingly

DATED AND DELIVERED THIS 4TH DAY OF NOVEMBER 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

Luka Murungi, the Appellant in person.

Ms B. Nandwa, Prosecution Counsel for the Respondent.