REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 101 OF 2019

CG.....APPELANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal against the decision by Hon. D. Odhiambo, Resident Magistrate on 4th September 2019 in Shanzu S. O. Case No. 38 of 2018, *Republic v Cleofa Gwiyo*).

JUDGMENT

Background

1. CG was charged with the offence of defilement contrary to Section 8 (2) of the Sexual Offences Act No. 3 of 2006. The particulars are that Cleofa Gwiyo on diverse dates between December 2017 and 12th April 2018 at Kisauni area in Kisauni Sub County within Mombasa County intentionally and unlawfully caused his penis to penetrate the vagina and anus of LA a girl aged 11 years.

2. In the alternative charge, Cleofa Gwiyo was charged with the offence of committing an indecent act contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act No. 3 of 2006. The particulars are that Cleofa Gwiyo on diverse dates between December 2017 and 12th April 2018 at Kisauni area in Kisauni Sub County within Mombasa County intentionally and unlawfully touched the vagina and anus of LA a girl aged 11 years with his penis.

3. The trial magistrate considered the evidence of three prosecution witnesses and found that the prosecution had established a prima facie case for the accused to be put on his defence under Section 211 of the Criminal Procedure Code. The accused then gave sworn evidence. The trial magistrate found the accused guilty of the offence of defilement contrary to Section 8(1) and 8(2) of the Sexual Offences Act and accordingly convicted under Section 215 of the Criminal Procedure Code.

4. The appellant was aggrieved and dissatisfied by the entire ruling and decision by the trial court and preferred the appeal herein on the following grounds:-

> 1. That the Learned trial Magistrate erred in law and fact in finding that the prosecution had proved his case against the Appellant whereas the evidence was not sufficient to make out a prima facie case against the Appellant.
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> 2. That the Learned trial Magistrate erred in law and fact in not appreciating the facts that there was no evidence linking the convict to the offence nor was the perpetrator properly identified.
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> 3. That the Learned trial Magistrate erred in law and fact in convicting and sentencing of the Appellant when the crucial ingredients of the offence charged were never established and the prosecution did not discharge its duty to the required standard of proof beyond any reasonable doubt.
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> 4. That the Learned trial Magistrate erred in law and fact in shifting the burden of proving the Appellant's guilt from the prosecution and implied that the Appellant had a duty to proof his innocence.
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> 5. That the Learned trial Magistrate erred in law and fact by failing to take into account material contradictions and inconsistencies which did not confirm the charge, thus rendering unsafe the conviction of the Appellant.
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> 6. That the Learned trial Magistrate erred in law and fact misapprehending the facts and applying the wrong principles and therefore

arrived at a wrong decision.

7. That the conviction and sentence of thirty (30) years imprisonment imposed by the learned trial magistrate is harsh and excessive in consideration of all circumstances.

8. That the Learned trial Magistrate erred in law and fact in failing to appreciate and/or ignoring the mitigation of the Appellant, and further in not finding that the Investigating Officer herein did not properly investigate the case and or adduce his crucial evidence as no charge was ever established.

9. That the Learned trial Magistrate totally misdirected himself in delivering a wrong decision by failing to consider and appreciate the evidence on record and the circumstances of the whole case.

5. This appeal was canvassed by way of written submissions.

Prosecution's Case

6. PWI, the Complainant aged 12 years old. *Voire dire* examination was conducted on the minor and the court established that the minor understood the duty of saying the truth and she was sworn in. said that she stays with her sisters at [Particulars Withheld] and before moving to [Particulars Withheld], she used to stay with her parents at Docks Station. Her mother is CA and stayed with her stepfather Corporal CG. They used to stay in a storey building, their house had three rooms and they stayed there for three years. PW1 said that at the time, she used to go to [Particulars Withheld] Primary in standard 4. PW1 said that her stepfather used to do bad manners to her, he had sex with her. Her mother was a business woman in the market and she would leave in the morning at 6 am and would be back by 10 pm. Her big sister used to remain in the house. When her mother went to the market, she would be left behind with her brother aged six years. The accused would do bad manners when her mother or sister were not around. PW1 said she did not tell anyone and the accused did it three times before they were caught by her mother. The accused thought that her mother had left but she came back and found the door locked. He told PW1 to get under the bed where she was found by her mother. PW1's mother reported to Nyali Police Station. PW1 said that she also went to Nyali Police Station and recorded the statement. PW1 went to hospital and was tested by the doctor. She was also given a form by the doctor, PRC form MFI-1. PW1 said that she does not remember the other form that her mother was given. She was also given the birth certificate at some point to take to school, MFI-2. PW1 said that the accused had sex with her three times. The accused told PW1 to do what he wanted before he could take her to school. PW1 had stayed at home for a week before going to school. The accused told her to go to the bedroom and remove her clothes. She had a trouser and the accused told her to put on a dress. He then told her not to tell anyone what he had done. He told her to lie on the bed he then lay on top of her. He had removed his trousers and boxers. He only had a shirt. He then inserted his penis in her vagina. PW1 said that after some time, she told the accused that she had lost a book and wanted him to buy her the book. The accused told PW1 to do what he had done before. PW1 identified the accused in court.

7. PW2, No. 235833, Inspector William Msereka Makeo, said that on 12.4.2018, he was instructed by Mr. Washington Okero to visit the house of the accused CPL CG who is a police officer and who it was alleged that he had defiled his child. PW2 went to the accused's house in the company of Sergeant Lumbari where they went to the house and found him. They took him to CGH for examination to confirm. Later on, they went back to the office accompanied by the accused person and the child. However, PW2 said that he could not remember the name of the child. The child was interrogated in front of the accused and her mother and she confirmed having been defiled by the accused. The accused was taken to Nyali Police Station and the minor was taken to hospital the same day. PW2 said that his role was arrest the accused and take him to Nyali Police Station which he did and handed the accused over to the investigating officer and booked at Nyali Police Station. Later, PW2 said that he recorded a statement at Nyali Police Station.

8. PW3, Dr. Nabil Kwarani based at Coast General Hospital said that he had a P3 form (MFI-3) for the complainant aged 11 years where the victim alleged to have been defiled by someone known to her as her stepfather. The form was issued at Coast General Hospital. PW3 said that on 19.4.2018, the complainant had changed her clothes. She had been defiled by a person known to her, she was in fair good condition, the hymen was broken, approximate age not indicated, and the nature of injury was defilement. The degree of injury was maim, there was an old scar and healing laceration, tests done are in the PRC form. The P3 form was signed on 19.4.2018. PW3 produced the P3 form as Exhibit 3. He also had a PRC form for the complainant issued on 12.4.2018. She was aged 12 years and alleged to have been defiled by her stepfather who was buying her perfumes, cutex and taking her to the salon. The outer genitalia was normal, hymen broken with an old scar and there were healing lacerations. The HIV test was negative. The report was signed by Saida Mwinyi who is a nurse and PW3 knows her. He produced the PRC as Exhibit 1.

Defence Case

9. DW1, CG after being sworn, stated in Kiswahili that as per the doctor's documents, there was no evidence of penetration. He said that he never touched the girl. He said he was a police officer and knew that the PRC form does not implicate her. The doctor said that he did not do anything. He never touched her private parts. DW1 said that the child must have been taught by her mother to say what she said. He had taken a loan of Kshs. 250,000 and gave her mother Kshs. 30,000. He was to boost the business of his 1st wife who gave her Kshs. 40,000. She linked up wither brother called SO who went and demanded that he gives her Kshs. 100,000 which he refused. DW1 said that he was in the house with his son when PW1's mother confronted him that he had been sleeping with PW1. DW1 said that he stays with the younger wife who is the mother of the Complainant and knows that he had the money. DW1 said that he told them that he was innocent and they would take him to the police if they wanted to. DW1 said that when the matter was reported, he denied committing the offence before his seniors. DW1 and the Complainant was taken to the hospital for testing and the doctor indicated that there was no evidence linking him to the offence. The PRC form had old scars and the doctor did not show the cause of the scars. DWI's brother in law did not record a statement and was not called as a witness. The Complainant's mother recorded a statement but was not called as a witness. DW1 said that at the time of the incident, he was staying with his wife, elder sister of the Complainant and younger brother. None of them went to testify in court. Also, the Investigation officer did not appear in court to testify. DW1 prayed to be acquitted because he is innocent.

Appellant's Submissions

10. The Appellant submits that the minor was previously accustomed to street life while in Nairobi and before her mother started living with the Appellant in Nairobi and Limuru, the minor going to school was a struggle, the Appellant had to force her. The Appellant submits that on her age and in modern times, a minor of 12 years if at all true will hardly forget her birthday, its PW1's evidence that she does not know her age but alleges to be 12 years, whereas in the charge sheet it's stated that the complainant is a minor of 11 years and further that she has never seen her birth certificate. The Appellant submitted that the inconsistencies and contradictions are wanting. Age is a crucial element in the offence and needs to be ascertained or proved beyond reasonable doubt. It is the minor's evidence that she is in class 4 at [Particulars Withheld]. She was also at class 4 at [Particulars Withheld] Primary School, no evidence was demonstrated that indeed the minor was in the said schools and in class 4. The Appellant submits that it is during cross examination that the minor testified that she does not know how to read and was dropped from class 5 to class 2 at [Particulars Withheld] School in Nairobi, which affects the credibility of PW1 evidence and the Appellant submits that the trial court while conducting a *voire dire* examination formed a wrong opinion. The Appellant submits that the trial court rightly emphasized the importance of ascertaining the age of the Complainant, and further confirmed the inconsistencies as to the contents of the charge sheet which indicated the Complainant was 11 years while she stated to be 12 years. The Birth Certificate was not produced as an exhibit, Notification of Birth was never produced, and the mother did not testify at least to confirm the age of the minor, the trial court proceeded to rely on the PRC form which gave the age of the minor as 12 years approximately, which is speculative and relying on such document the prosecution failed to prove the age of the Complainant beyond reasonable doubt. The Appellant submitted by citing the case of *Pandya v Republic* [1957] EA 336, *Okeno v Republic* [1972] EA 32, *Hadson Ali Mwachongo v Republic* [2016] eKLR, and *Alfayo Gombe Okello v Republic* Cr. App. No. 203 of 2009 (Kisumu) where it was established that age is an essential ingredient that must be proved beyond reasonable doubt.

11. The Appellant submits that the Appellant is a stepfather having moved in with the mother of the complainant while in Nairobi, the previous background of the mother and the alleged minor is questionable having dropped out of school to roam the streets with some street families, a circumstance that the Appellant submits that the Honourrabe Court should take judicial notice of the same which the Appellant questions the credibility of her uncorroborated evidence. The Appellant submits that it is alleged that he had defiled the minor on several occasions since the year 2016 but would not remember the date to about 2018 when it is alleged that the mother of the Complainant caught them in the bedroom, not in the act but speculative since it is allege the door was closed, where as it was the evidence of PW1 the minor use to do cleaning of the whole house including and up to under the bed, it was also the evidence of the Appellant that on that day was on drinking spree and had hurt his foot and was on crutches. The mother did not give her evidence to corroborate what the child was saying, further, there was no explanation of whether the minor was abused and defiled severally since 2016, why would she wait for almost 3 years to report the incident, a keen mother in whatever circumstances would note the difference in her child especially in the heinous offence of defilement and take action immediately. The Appellant submits that the time taken, the inconsistencies, gaps, uncorroborated evidence shakes the credibility of the Complainant's evidence, the subsequent conduct of the mother all through creates doubt in the mind of the court as whether the assessment of the minor really understood the value of telling the truth. That the allegation of defilement was driven by ill will and malice coupled with extortion by the Complainant's mother and uncle. The Appellants blood and urine samples were taken among other tests and there was nothing linking the Appellant to the offence. The Appellant submits that it is strange that the said SO, the Appellant's bother in law having been in the scene and actively taking part preliminary stages never recorded a statement with the police while the minor's mother refused to testify. The Appellant submits by citing the case of *Joshua Onyango Sewe v Republic* in Siaya Criminal Appeal No. 14 of 2017 where it was held that, *suspicion however strong cannot prove the basis of inferring guilt which must be proved by evidence… the evidence must be overwhelming and points to his guilt because the conviction has the effect of taking away the accused freedom and at times life as in the case herein.* The only reason why the Appellant was dragged to court was on extortion and on mere suspicion being in a room with his daughter which is not unusual and considering she is a minor.

12. The Appellant submits that the prosecution failed to prove the allegation of defilement as against the Appellant as per the required standards hence beyond reasonable doubt. The trial court failure to consider the inconsistencies of the evidence given by the parties, the conduct of the minor's mother, the brother-in-law, the conduct of the investigating officer's failure to conduct proper investigations, identify and arrest the perpetrator and eventually failure of the investigating officer to testify of his finding, the trial court relying on wrong principles of the law and misapprehension of facts, the element of defilement being present but as to whether it was the Appellant that defiled the Complainant, whose age is also speculative and not ascertained, the evidence was of a mere suspicion and not cogent enough to find a sound conviction and sentence.

Respondent's Submissions

13. The Respondent submits that the evidence presented by the prosecution was sufficient to prove the case against the Appellant beyond reasonable doubt, the prosecution had to prove that the victim is a minor, there was penetration and the perpetrator had to be properly identified by the prosecution.

14. The Respondent submits that as required, the element of age of the complainant was sufficiently proven in court by the testimony of PW1 and PW3. PW1 testified that she was 12 years old to the best of her knowledge. It was further testified by PW3 that the victim was a minor of 12 years as indicated in the Post Rape Care form which was filled according to the information given to the medical attendant by the patient. Also, the victim was subjected to *voir dire* examination by the court which is proof that the estimated age in the P3 and PRC forms were good enough to support the victim's evidence on age and consequently, the trial court formed the impression that the victim was below the age of 18, a minor.

15. The Respondent submits that proof of penetration was made in court through the testimony of PW1 and the medical evidence produced by PW3 as well as the PRC and P3 forms produced by him as exhibits corroborated the victim's testimony. On the elements of identification, the Appellant was further positively identified by PW1 as her stepfather, a person well known to her seeing as they had been living together as a family. In addition to that, the Appellant does not dispute being known to the victim and confirms that he is the victim's stepfather and that they were living together as a family.

16. The Respondent submits that the other witnesses including the victim's mother did not testify in court so as to corroborate the victim's

evidence. There was a clear indication that this was only occasioned by failure on the part of the police to produce the police file which is normally relied upon by the prosecution to prosecute the matter. Also, the Respondent submits that according to Section 143 of the Evidence Act there is no legal requirement in law on the on the number of witnesses to be presented in court so as to prove a fact. Moreover, whether a witness should be called by the prosecution is a matter of discretion on the part of the prosecution.

17. The Respondent submits that 124 of the Evidence Act gives an exception to the general rule on corroboration in relation to sexual offence matter. The Complainant is to be considered truthful and reliable since her testimony was consistent and not shaken at any point even during cross examination and also for the other reasons cited by the trial court in its judgment. Considerably, the evidence presented before court proved the charges against the Appellant beyond reasonable doubt and humbly requested that this limb of appeal b dismissed.

18. The Respondent submits that as opposed to submission by the Appellant, he gave sworn evidence through which he admitted to knowing the victim but denied involvement in the crime claiming to have been implicated by his wife, the victim's mother and his brother-in-law. However, in consideration of the circumstances of the case especially the history of defilement as evidenced by the Complainant, there is no relationship deduced between the offence committed by the Appellant and his claim of being implicated.

19. The Respondent submits that consequently, the court then considered the defence in light of the evidence by the prosecution as shown on page 6 paragraph 16 of the judgment and it is therefore not true that the defence by the Appellant was ignored by the trial court. The Respondent submits that all the elements that constitute the offence of defilement were proved by the prosecution beyond reasonable doubt and therefore, the conviction handed to the Appellant was safe and within the law. The law under which the Appellant was charged provides for a mandatory sentence. The law under which the Appellant was charged, Section 8(2) of the Sexual Offences Act provides for a mandatory sentence.

20. The Respondent submits that in line with the prevailing jurisprudence and the circumstances of the case, the learned trial magistrate gave a justifiable, fair and correct sentence to the Appellant. The Respondent asked that the appeal be dismissed in its entirety.

Analysis and Determination

21.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."**

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

i. Whether the prosecution discharged the standard of proof beyond reasonable doubt

ii. Whether there are contradictions and inconsistencies that rendered the conviction unsafe

iii. Whether the evidence on record and circumstances of the whole case were considered

iv. Whether the Appellant's mitigation was considered

v. Whether the sentence was harsh and excessive

Whether the prosecution discharged the standard of proof beyond reasonable doubt

23. The Complainant lived with the Appellant in the same house as her stepfather for a few years and interacted with him often. It is also evident that the Appellant defiled the Complainant severally whereby according to the typed proceedings, the Complainant stated that the Appellant used to do bad manners to her when her mother and big sister were not in the house, he did bad manners to her three times before her mother caught them, and on cross examination, the Complainant said that the Appellant started doing bad manners to her while they were in Nairobi and that it first happened in 2016. The identity of the Appellant as the perpetrator is therefore not disputed as the Appellant was someone familiar to the Complainant.

24. According to the PRC form issued on 12.4.2018 and the P3 form signed on 19.4.2018 produced by PW3, Dr. Nabil Kwarani, as exhibits 1 and 3 respectively, indicated that the hymen was broken, there was an old scar and healing lacerations but with the outer genitalia being normal. On cross examination, PW3 said that a broken hymen is a sign of penetration and the hymen can be broken through penis penetration. This is proof of the ingredient of penetration. On the contrary, the Appellant in submitting disputed the old scars and emphasized that if at all the Appellant had defiled the minor, the scars or lacerations would be fresh or recent. However, the complainant in her testimony stated that the Appellant first defiled her in 2016, 2 year before they were caught, the history of defilement of the Complainant was consistent with the old scar.

25. On the ingredient of age, the Complainant in her testimony stated that she was 12 years old and in cross examination said that is what she had been told by her mother. The birth certificate was marked as MFI-2 during her testimony but the same was not produced. PW3 in his

testimony stated that the P3 form indicated that the Complainant was 11 years old but stated that she was 12 years old according to the PRC form. There is no indication anywhere that the age assessment was done and no other document on record shows the proper age of the minor. However, on cross examination, PW3 stated that the approximate age is indicated on the PRC form.

26. Since the passage of the Sexual Offences Act, the practice has been that age assessment of defilement victim is carried out by dentists or medical doctors. This is in line with the legal proposition in the case of ***Francis Omuroni v Uganda*** **Cr. Appeal No. 2 of 2000** having indeed considered the issue held:-

> **"That in defilement cases medical evidence is paramount in determining age of the victim but in absence of any other evidence age may also be provided by birth certificate, the victim's parents or guardian and by observations and common sense"**

27. This court finds that the court's observation that the Complainant was a minor and its decision to conduct *viore dire* examination in addition to the doctor's assessment of the approximate age of the minor in filling the PRC form and in respect to the authority above is sufficient indication that proof of the Complainant's age being below 18 years is sufficient.

Whether there are contradictions and inconsistencies that rendered the conviction unsafe

28. In contradictions and inconsistencies, the Appellant in submitting pointed out the inconsistencies and contradictions in the age of the Complainant where in her evidence sand the PRC form state that she is 12 years old while the charge sheet and the P3 form state that she is 11 years old. The Appellant also submitted on the contradictions and inconsistencies that it is alleged that the Appellant had defiled the complainant on several occasions since the year 2016 but would not remember the date to about 2018 when its alleged that the mother of the complainant caught them in the bedroom, not in the act but speculative since the door was closed. These inconsistencies and contradictions the Appellant in submitting pointed to the mother's failure to give her evidence to corroborate what the child was saying.

29. In criminal cases the prosecution is required to avail to the court all relevant evidence to enable court make an informed decision based on evidence available. This court is alive to the fact there is no legal requirement in law on the number of witnesses to prove a fact. **Section 143** of **Evidence Act (Cap 80) Laws of Kenya** provides**:-**

> **"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"**

30. In the case of ***Keter V Republic*** **[2007] 1 EA 135** the court held inter alia thus:-

> **"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."**

31. This court finds that the prosecution had the right of calling witnesses it considered relevant to support its case, including the Complainant's mother. This equally applies to where the Appellant submitted that the prosecution failed to call the investigating officer and his brother in law.

32. On the issue of corroboration of the minor's evidence, where a child of tender years gives sworn testimony or is affirmed, corroboration is unnecessary. This is the position in the cases of **Johnson *Muiruri v. Republic* (1983) KLR 445** and ***John Otieno Oloo v. Republic*** **[2009] eKLR**. During *viore dire* examination of the complainant aged 12 years, the court established that the minor understood the duty of saying the truth. She was therefore sworn in. This court finds that it was unnecessary for her mother or any other witness to corroborate her testimony considering the P3 and PRC forms were produced in court as evidence.

Whether the evidence on record and circumstances of the whole case were considered

33. The Appellant submitted that the trial court failed to consider the inconsistencies, the evidence given by the parties, the conduct of the minor's mother, the brother in law, the conduct of the investigating officer's failure to conduct proper investigation to identify and arrest the perpetrator and eventually failure to of the investigating officer to testify on his finding, the trial court relying on wrong principles of law and misapprehension of facts, the complainant's age which is speculative and not ascertained, evidence which is of mere suspicion and not ascertained.

34. The trial court analysed the evidence of prosecution witnesses, defence evidence and circumstances of the case. The trial court then went further and analysed the age of the victim, penetration and identity of the perpetrator as the three ingredients that needed to be proved in arriving at its decision.

Whether the Appellant's mitigation was considered

35. Section 329 of the **Criminal Procedure Code** is also relevant on the issue of mitigation. It provides as follows:-

> **'The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.'**

36. The court in ***Joseph Kaberia Kahinga & 11 others v. Attorney General*** **[2016] eKLR** had this to say in respect of mitigation:-

> **"But what is mitigation in our context?" Simply understood, the word mitigation means the act of lessening or making less severe the intensity of something unpleasant such as pain, grief or extreme circumstances. It is an act of making a condition or consequence less severe and in our case it is the act of making a punishment or sentence in a criminal case less severe. In Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. mitigation is defined as: "Alleviation; abatement or diminution of a penalty or punishment imposed by law. 'Mitigating circumstances' are such as do not constitute a justification or excuse of the offence in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability."**

37. In mitigating, the Appellant's advocate stated to court that the accused is a public servant and may lose his job, he has two families that depend on him, he has school going children that will be greatly affected by any sentence made out. The trial court in sentencing pointed out that he had considered mitigation of the defence but stated that the law is harsh on the nature of the offence of defilement with very little possibility of flexibility. It is evident that the trial court considered the mitigation in sentencing the Appellant.

Whether the sentence was harsh and excessive

38. 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** which state as follows:-

> **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.**

39. The trial court held that the offence which the accused had been convicted had a sentence of life imprisonment. However, the trial court sentenced the accused to 30 years in prison in consideration of the Muruatetu case.

40. This court finds that the trial court had the discretion of sentencing the Appellant to 30 years in prison which sentence was lenient considering that Section 8 (1) and (2) under which the Appellant was charged provided for life imprisonment. Further, the Supreme Court directions on Muruatetu Case that the authority is only applicable to murder trials renders the authority inapplicable to the case herein.

41. In conclusion, this court finds that the prosecution proved ingredients of defilement beyond reasonable doubt. This appeal is therefore dismissed and the trial court's conviction and sentence upheld.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,nTHIS 9TH DAY OF DECEMBER, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Turuki- Court Assistant

Ms. Karanja for the Respondent

Mr. Magiya for the Appellant

HON. LADY JUSTICE A. ONG'INJO

JUDGE