REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 99 OF 2018

JOSEPH GONA FONDO.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal from the original conviction of Hon. D. Mochache, Senior Principal Magistrate, in Shanzu Senior Principal Magistrate's Court Criminal Case No. 840 of 2015).

JUDGMENT

1. The appellant was convicted for 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 the charge were that on the 17th day of July, 2015 at [Particulars Withheld] area in Kisauni sub-county of Mombasa County intentionally caused his penis to penetrate the vagina of KK [name withheld] a child aged 21/2 years. He was sentenced to serve life imprisonment.

2. He was dissatisfied with the said decision and on 9th October, 2018 he filed a petition of Appeal through the law firm of Ameli Inyangu & Partners. He raised the following grounds of appeal-

i. That the Learned Trial Magistrate erred in law and fact in convicting the appellant without proof of the ingredients of the offence thereby arriving at a decision unsupported by the evidence on record;

ii. That the Learned Trial Magistrate erred in law and fact by placing reliance on hearsay evidence from the complainant thereby arriving at an unjust decision;

iii. That the Learned Trial Magistrate erred in law and fact by convicting the appellant in the absence of direct evidence properly identifying the appellant as the perpetrator of the offence;

iv. That the Learned Trial Magistrate erred in law and fact by finding the appellant guilty of defilement despite evidence indicating that his DNA did not match the DNA profile of the perpetrator of the offence;

v. That the Learned Trial Magistrate erred in law and fact in arriving at the conclusion that the appellant's house was the scene of crime despite lack of evidence being tendered in support of such assertion;

vi. That the Learned Trial Magistrate erred in law and fact in finding that the prosecution proved its case beyond reasonable doubt despite the glaring inconsistencies in the prosecution's evidence;

vii. That the Learned Trial Magistrate erred in law and fact by giving expert evidence a technical interpretation that was not within the Learned Trial Magistrate's area of expertise;

viii. That the Learned Trial Magistrate erred in law and fact by convicting the appellant purely on circumstantial evidence despite contrary direct evidence; and

ix. That the Learned Trial Magistrate erred in law and fact in proceeding to convict and sentence the appellant to life imprisonment which sentence was excessively harsh and contrary to the evidence placed before her in the subordinate court.

3. Mr. J. Magolo Advocate, represented the appellant at the hearing of this appeal. He filed written submissions on 21st May, 2019. In highlighting the same, he stated that the appellant was sentenced to life imprisonment for the offence of defilement under Section 8(2) of the

Sexual Offences Act. He further submitted that the conviction was based on evidence which was circumstantial in nature as the victim was 2½ years old and could not talk. He further stated that the evidence relied on came from other witnesses who were not present when the incident happened but were present in the compound.

4. He indicated that there were expert witnesses from KEMRI and the Government Chemist who were unable to determine if the victim was defiled and if the appellant committed the offence. He elaborated the said submission by saying that the Trial Magistrate ordered for the blood of the appellant to be drawn afresh for examination of the same by KEMRI. Counsel for the appellant was of the view that the evidence from the Government Chemist was weak and did not connect the appellant to the commission of the offence. He further stated that the report from KEMRI also did not connect the appellant to the commission of the offence as the victim's diaper which was submitted to KEMRI was examined and reported not to contain spermatozoa. He said that the exhibits were in the custody of the prosecution and if they were interfered with, the appellant could not take blame for that. He took issue with the suggestion that was made by the victim's mother that the diaper had been exchanged.

5. In submitting on the evidence of PW6, Dr. Francis Otieno, Mr. J. Magolo stated that he testified that there was swelling, colour change (redness) and loss of function of the victim's private parts. The Doctor also said that there was an infection on her private parts as per the PRC form. It was submitted that the person who filled the PRC form was not called to testify. He argued that the P3 and PRC forms could not be the basis of a conviction.

6. Counsel for the appellant contended that the lower court proceedings were a nullity owing to the manner in which they were conducted. He indicated that the Trial Magistrate ordered for collection of more exhibits when the case was ongoing and by so doing, she stopped being an arbiter and became an investigator, a factor which vitiates the trial.

7. Mr. Magolo also took issue with the fact that in the middle of court proceedings, a party stood up and was allowed to address the court. The said person was said not to have been sworn and was not a witness and as such, the appellant was not able to cross-examine the said person. It was submitted that the parents of the victim stood up in the course of the lower court proceedings and said they were not satisfied with the report from the Government Chemist. It was argued that the trial was not conducted in a fair manner as the provisions of the Criminal Procedure Code which state that witnesses shall testify, be cross-examined and re-examined, were not followed by the Trial Magistrate. It was contended that the lower court case was a nullity and the evidence adduced was not sufficient as an offence of defilement requires serious evidence to form the basis of a conviction.

8. In concluding his submissions, the Counsel for the appellant submitted that the Trial Magistrate was under the impression that life imprisonment was a mandatory sentence for the offence the appellant was charged with. He stated that following the case of **Francis Karioko Muruatetu and Another vs Republic** [2017] eKLR, the position of the law with regard to sentencing changed and courts now have the discretion to impose other forms of sentence other than life imprisonment. He prayed for the appeal to be allowed.

9. Mr. Muthomi, Prosecution Counsel, highlighted submissions that were filed by Ms Marindah on 15th July, 2019. He urged this court to look at the evidence, evaluate the same and assess it to reach an informed decision.

10. He submitted that the offence of defilement was proved beyond reasonable doubt. He stated that the prosecution was under obligation to prove the age of the victim and a birth certificate which was produced proved the victim was 2½ years old.

11. On the issue of penetration, he stated that the prosecution proved there was penetration. The PRC form which was produced as an exhibit illustrated that the Doctor noted oedema of the labia majora of the victim. He also noted a vaginal discharge, irregular hymen, widespread multiple abrasions and bleeding lesions due to forced penetration by a blunt object. Mr. Muthomi submitted that the ingredient of penetration in a case of defilement was proved. He relied on the provisions of Section 2 of the Sexual Offences Act which defines penetration as either partial or complete penetration.

12. With regard to the identity of the person who committed the offence, the Prosecution Counsel submitted that it was proved beyond reasonable doubt by the prosecution which relied on circumstantial evidence. It was submitted that the appellant was the only man in the house where the offence occurred. The other people in the said house were children of tender age. This court was informed that in his defence, the appellant admitted that he was in the house where the offence was said to have been committed and that he was the only man in that house. It was argued that by so admitting, the appellant put himself at the scene of crime. In Mr. Muthomi's view, the Hon. Magistrate arrived at the proper conclusion that the appellant was the one who penetrated the victim's vagina.

13. On the fact of the victim's mother having been given audience by the Trial Court when the hearing of the case was ongoing, the Prosecution Counsel relied on the Victim Protection Act of 2014 which has opened avenues for victims to participate actively and not passively in criminal proceedings. He indicated that victims have at times been given latitude to even cross-examine witnesses in court and also to address the court. He indicated that the Hon. Magistrate gave the victim's parents an opportunity to be heard.

14. On the issue of the production of the PRC form by PW6, Mr. Muthomi submitted that the appellant's Advocate did not object to production of the same by the said witness. In his view, Section 77 of the Evidence Act cures any defect in the production of the said document, if any.

15. With regard to the issue raised by Mr. J. Magolo that DNA examination did not connect the appellant to the offence, the Prosecution Counsel submitted that an act of defilement is not always proved by medical evidence or DNA. He took the position that if this court was to find that the DNA report did not connect the appellant to the commission of the offence, there was other overwhelming evidence. He took the stand that the lower court proceedings were not a nullity and that the orders made by the Trial Magistrate were in furtherance of the administration of justice and that the appellant's Advocate had not shown the prejudice the appellant had suffered by undergoing a 2nd DNA examination.

16. In responding to the submission made by Mr. J. Magolo about the decision in Francis Kariako Muratetu (supra), Mr. Muthomi submitted that it was held that courts have discretion to make a determinable sentence. He submitted that life imprisonment is still applicable in this case as the victim was 2½ years old. He urged this court to dismiss the appeal for lack of merit.

17. In counteracting the submissions made by the Prosecution Counsel, Mr. J. Magolo, submitted that the holding in the case of **Francis Kariako Muratetu** (supra) was applicable in the circumstances of this case but the Trial Magistrate held that she had no discretion other than to impose life imprisonment.

18. It was reiterated that it was crucial for the maker of the PRC form to be called as it stated there was a possibility of penetration. He took issue with the P3 form which was filled 10 days later. He maintained that in this case, the P3 form and DNA did not prove penetration.

ANALYSIS AND DETERMINATION

19.The duty of the first appellate court is to analyze and re-evaluate the evidence adduced before the Trial Court and reach its own independent conclusion while bearing in mind that it has neither seen nor heard witnesses testify and make an allowance for the said fact. In **Kiilu and Another vs Republic** [2005] 1 KLR 174, the Court of Appeal stated thus:-

> **"1. An appellant on first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions.**
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> **2. It is not the function of a first appellate Court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial Court has had the advantage of hearing and seeing the witnesses."**

20. The issues for determination in this appeal are:-

> **i. If the victim was defiled;**
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> **ii. If the interjection of the victim's parents in the proceedings rendered the case a nullity; and**
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> **iii. If the appellant was identified as the perpetrator of the offence; and**
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> **iv. If the sentence meted out against the appellant was harsh or excessive.**

If the victim was defiled

21. The evidence on record as adduced by the victim's mother, PW1 indicates that on the 17th of July, 2015, the appellant was in close physical contact with her child who was 2½ years old. It was her evidence that she allowed her child to go out and play with other children. When she went for her at around 5.00p.m., she did not find the children outside. She called out her child's name, K [name withheld], other children came out but she did not see her daughter. She recounted that she told a girl by the name V [name withheld] to call K so that she could see her. After a few minutes, she became impatient. She stated that V appeared at the balcony with the child. PW1 told her to bring the child down. After she did so, V and another child name S [name withheld] followed PW1 to her house.

22. It was PW1's evidence that she sat opposite her aunt and started breastfeeding her child. She further gave evidence that when she opened her child's diaper, she realized it was torn. She then saw a thick content. When she opened the child's legs she saw a lot of mucous like stuff coming out. Her Aunt (F) told her that the child had been defiled. PW1 indicated that she asked V if there was a big boy in their house. She noted that S became scared and started retreating. She testified that V told her *"hakuna mtu mkubwa except Joseph Uncle ya S who was carrying the baby in the sitting room wakiona cartoon"*.

23. PW1 gave evidence that she went to the house of S and knocked at the door and the accused appeared. She asked him what he had done to the child but he denied having done anything. She had never seen him before. She called her husband. She asked the appellant to accompany her to the Police Station so that his specimen could be examined. He agreed. On the way, they met a police vehicle which they stopped. The appellant was handed over to the police. PW1 reported to Nyali Police Station. She carried with her K's pamper which was torn on the exterior. She then went to Coast Province General Hospital (CPGH) where K was examined and a specimen taken from her vagina. It was her evidence that when K was examined, the Doctor told her that she had been defiled. A specimen was also taken from the appellant. A Post Rape Care (PRC) form was filled. K's pamper (diaper) was retained by the Doctor. A P3 form was later filled. PW1 indicated that the specimen collected from K was taken to the Government Chemist 5 days after the incident but the appellant's specimen was taken to the Government Chemist one and a half years later.

24. PW4 was FG [name withheld]. She was PW1's Aunt. She corroborated PW1's evidence that when she brought K back to the house for feeding, she saw some thick fluids coming out of K's private parts after PW1 removed K's diaper. She confirmed that PW1 asked V if there was a man in their house and she responded that Uncle Joseph was in the house. PW4 looked at the child's private parts and saw some bruises.

25. PW5 received a report of defilement from PW1. They took the child to CPGH. The Doctor stated the child had been defiled. The PRC was filled and the P3 form was filled later.

26. The Doctor, PW6, testified that in filling the P3 form, results were derived from the PRC form. He testified that the victim when examined had mucoid vaginal discharge. She had multiple vaginal abrasions which were reddish, the hymen was irregular and bleeding. A test done revealed pus cells which was evidence of a genital infection.

27. It is this court's finding that going by the evidence of PW1, PW4 and PW6, there is no doubt that the victim was defiled.

If the interjection of the victim's parents in the proceedings rendered the case a nullity

28. The victim of the offence in this case was 2½ years old. She was too young to express herself and did not give evidence. On 5th April, 2017 the Prosecutor applied for the victim to be declared a vulnerable witness due to her age and for her evidence to be dispensed with. The court declared the minor a vulnerable witness and her evidence was dispensed with. Even though Mr. J. Magolo objected to the active role played by the victim's parents in the course of the trial, this court's finding is that it was done in good stead. Under the Victim Protection Act, victims of an offence can play an active role in a case, either personally, through an Advocate or an intermediary. The days when they used to be silent observers and listeners are long gone.

29. In the case of **Joseph Lendrix Waswa v. Republic [2019] eKLR**, the Court of Appeal delivered itself thus on the rights of victims:-

> **"From the foregoing, it is clear that the Constitution and the VPA gives a victim of an offence a right to access justice and a right to fair trial which rights, as Article 20(2) provides, should be enjoyed to the greatest extent consistent with the nature of the right. The right to a fair trial as Article 25 provides is an absolute right. The fact that the rights of an accused person to fair trial are enumerated and the rights of victims of offences are recognized by Article 50(9) but to be stipulated in a legislation indicates that the Constitution intends, as a principle, that the constitutional rights of an accused person to a fair trial should be balanced with the statutory rights of the victim of the offence as stipulated in VPA and further that the rights of the victim of crime should be exercised without prejudice to the rights of an accused person to a fair trial".**

30. In the present case, this court sees no prejudice that was occasioned on the appellant when the Trial Court allowed the parents of the victim to make interjections on behalf of their child who had been declared a vulnerable witness by virtue of her tender age.

If the Trial Magistrate failed in her duty as an arbiter by ordering for a second DNA test to be done

31. Mr. Magolo took issue with the Trial Magistrate's order for a 2nd DNA examination that was carried out. In his view, the Trial Magistrate by so doing became an Investigator and not an arbiter. Section 36 of the Sexual Offences Act states as follows on DNA testing-

> **"(1) Notwithstanding the provisions of Section 26 of this Act or any other law, while a person is charged with committing an offence under this Act, the court may direct that an appropriate sample or samples be taken from the accused person at such place and subject to such conditions as the court may direct for the purpose of forensic and other scientific evidence and to ascertain whether the accused person committed an offence."**

32. The above provisions empower Trial Courts to make orders for accused persons to undergo DNA tests to establish if they are connected to the commission of an offence. It follows therefore, that the Trial Magistrate acted within her powers when she made an order for a buccal swab to be taken from the appellant for DNA examination by KEMRI.

If the appellant was identified as the perpetrator of the offence

33. PW2, a Government Analyst testified of how he analyzed a buccal swab from the appellant which was submitted to the Government Chemist on 23rd November, 2016. A diaper and a high vaginal swab from the victim had been received at the said institution on 24th July, 2015. He stated that the diaper and high vaginal swab tested positive for human semen but the diaper did not generate a DNA profile. He concluded from the said profile generated from the high vaginal swab and the diaper that there was no match to the appellant.

34. The victim's father disputed the Government Chemist's report and applied for a second opinion on the said exhibits. The Hon. Magistrate made an order for a second DNA examination to be done at KEMRI for both the appellant and the victim. PW3 conducted the second DNA test at KEMRI and found no traces of DNA in the diaper and the high vaginal swab from the child. She stated that if the sample for another person was there, she could have established by profiling the DNA of another person.

35. In cross-examination PW3, stated that the person who gets the samples first gets better results because they are fresh. On being referred to the results from the Government Chemist, he stated that the sample (high vaginal swab) could have degenerated over a period of time due to storage facilities. She further stated that in practice, they collect more than one swab but what she received was a residue of what remained after the first examination. She stated that the said swab had no semen or DNA profile. She further said that the diaper and high vaginal swab which had been taken previously were not sealed when she received them.

36. With regard to the diaper which was submitted to KEMRI for analysis, PW1 testified that it was not the one her child was wearing when the offence occurred. She clarified the foregoing by stating that her child's diaper had a yellow line and was from Bebe Dou company, but the one submitted to KEMRI was blue in colour and had a black stain in the middle. She stated that her baby's diaper did not have a stain or poop but was wet all over. PW1's evidence was that her baby's diaper was torn but the diaper submitted to KEMRI was not torn. She also indicated that the diaper sent to KEMRI was wrapped in paper and not sealed. It is therefore not surprising that she did not trust the results from KEMRI as a different diaper other than the one her child was wearing when the offence was committed, was submitted to KEMRI thus the negative report.

37. As seen from the lower court proceedings, forensic evidence did not implicate the appellant to the commission of the offence. In

addition, no witness came forth to state that he/she saw the appellant commit the offence. The evidence available as to the identification of the appellant as the perpetrator of the offence is circumstantial in nature. In **R vs Taylor, Weaver and Donovan** 1928 (Cr. 21 Cr. App R2), the principles applicable in a case resting on circumstantial evidence were outlined as follows:-

> **"Circumstantial evidence is very often the best evidence. It is the evidence of the surrounding circumstances which, by intensified examination, is capable of proving a proposition with the accuracy of mathematics, it is no derogation of evidence to say that it is circumstantial."**

38. The evidence of PW1 and PW4 is clear that when V was asked by PW1 if there was a man in the house where PW1's child had been, she said that an uncle to S by the name Joseph was in the said house. PW1 and PW4 went to the said house and when PW1 knocked at the door, the appellant opened it. When PW1 told V to go and collect her phone from her house so that she could call the Police, the appellant told V *"usiende"*, meaning she should not go. PW1 further testified that V and S demonstrated to her how the appellant had placed the victim on his lap and that V explained that she took a long time to take the victim to PW1 as the appellant was still holding her.

39. In his defence, the appellant confirmed that the victim was in the house he was in, with other children. This court's finding is that although the appellant denied having committed the offence, the circumstantial evidence on record forms a chain link that is so well intertwined that the appellant cannot extricate himself from the said evidence. I therefore hold that the appellant being the only man who was present in the house where the victim was watching cartoons with other children is the one who had an opportunity to defile the victim. It is this court's finding that circumstantial evidence unerringly points him out as the perpetrator of the offence. The finding of this court is that the prosecution proved its case beyond reasonable doubt and that the appellant was properly convicted.

If the sentence meted out against the appellant is harsh or excessive.

40. After hearing the evidence by the prosecution and the appellant's defence, the Trial Magistrate found the appellant guilty of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act. He was sentenced to life imprisonment. This court is alive to the fact that since the decision of the Supreme Court of Kenya in the **Francis Karioko Muruatetu** case (supra), Trial and appellate Courts are now seized with the discretion to reduce what was hitherto regarded as mandatory minimum sentences and mandatory sentences. Contrary to Mr. J. Magolo's submission, this court's view is that the said decision did not make the mandatory sentences unconstitutional or unlawful but the Supreme court held that the mandatory nature of the death sentence is what is unconstitutional. The *ratio decidendi* of the said decision is captured in paragraph 69 which states thus:-

> "**Consequently, we find that Section 204 of the Penal Code is inconsistent with the constitution and invalid to the extent that it provides the mandatory death sentence for murder. For avoidance of doubt, this decision does not outlaw the death penalty, which is applicable as a discretionary maximum punishment."**

41. In this case, the Trial Magistrate sentenced the appellant to life imprisonment and stated that she was bound by the "Acts". My understanding of what she meant is that she had no discretion in sentencing the appellant other than by imposing the sentence of life imprisonment. As at the time the appellant was sentenced, the decision in **Francis Karioko Muruatetu** (supra) had been rendered. As such, the Trial Court had the discretion to sentence the appellant either to life imprisonment or to any other sentence befitting the circumstances of the case.

42. In ***Dismas Wafula Kilwake v R*** *[2018] eKLR,* the Court of Appeal stated as follows in regard to the mandatory minimum sentences provided for in the Sexual Offences Act:

> **"In principle, we are persuaded that there is no rational reason why the reasoning of the Supreme Court [in Francis Karioko Muruatetu & Another v. Republic, SC Pet. No. 16 of 2015], which holds that the mandatory death sentence is unconstitutional for depriving the courts discretion to impose an appropriate sentence depending on the circumstances of each case, should not apply to the provisions of the Sexual Offences Act, which do exactly the same thing.**
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> **Being so persuaded, we hold that the provisions of section 8 of the sexual Offences Act must be interpreted so as not to take away the discretion of the court in sentencing. Those provisions are indicative of the seriousness with which the Legislature and the society take the offence of defilement. In appropriate cases therefore, the court, freely exercising its discretion in sentencing, should be able to impose any of the sentences prescribed, if the circumstances of the case so demand. On the other hand, the court cannot be constrained by section 8 to impose the provided sentences if the circumstances do not demand it. The argument that mandatory sentences are justified because sometimes courts impose unreasonable or lenient sentences which do not deter commission of the particular offences is not convincing, granted the express right of appeal or revision available in the event of arbitrary or unreasonable exercise of discretion in sentencing.**
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> **The Sentencing Policy Guidelines require the court, in sentencing an offender to a non-custodial sentence to take into account both aggravating and mitigating factors. The aggravating factors include use of a weapon to frighten or injure the victim, use of violence, the number of victims involved in the offence, the physical and psychological effect of the offence on the victim, whether the offence was committed by an individual or a gang, and the previous convictions of the offender. Among the mitigating factors are provocation, offer of restitution, the age of the offender, the level of harm or damage inflicted, the role played by the offender in the commission of the offence and whether the offender is remorseful.**

43. This court has considered if it should vary the sentence imposed against the appellant and has arrived at the considered decision that the magnitude of the offence committed does not call for any other sentence other than life imprisonment. The victim of the offence was a toddler aged 2½ years. The appellant forced his manhood in the toddler's private parts thereby inflicting serious injuries on her. The incident traumatized her and as PW4 stated in her evidence, after the incident, the victim would cover her face whenever she would see men.

44. It is obvious from the lower court proceedings that the victim's parents had to fight tooth and nail in order to get justice for their child as

attempts to influence the outcome of the case started right from the time the child was taken to be examined at Coast Province General Hospital. There was an attempt made to influence the medical personnel that filled the PRC form by the watchman who used to guard the flats where PW1, the appellant and the appellant's brother lived in. PW1 testified that the said Watchman told the Clinician that the appellant's brother had a lot of money. PW1 testified that the brother of the appellant also tried to influence the outcome of the medical examination that was done on the victim. It is apparent that the Investigating Officer, No. 95767 Police Constable Jane Wanjiru attached to Nyali Police Station was very hostile to PW1 and initially caused the appellant to be charged with the offence of defilement whereas she was present when the victim was examined at CPGH and was informed in the presence of PW1 the child had been defiled. PC Wanjiru's claim that she charged the appellant with the offence of attempted defilement because the PRC form was not filled on the same date that the victim was examined is to say the least preposterous.

45. The said Police Officer went to great lengths to ensure that justice was not done to the victim in this case. This is further manifested by the fact that she bonded PW1 and the victim to attend court No. 2 on 21st October, 2015 at the Mombasa Chief Magistrate's Court, yet she knew for a fact that the appellant had been charged in Shanzu Senior Principal Magistrate's Court on 20th July, 2015. Further, after a high vaginal swab was taken from the victim and her diaper submitted for forensic analysis at the Government Chemist Mombasa, the Investigating Officer took one 1½ years to escort the appellant to the Government Chemist for buccal examination. Such delay was obviously meant to defeat the ends of justice.

46. As an Investigating Officer, she must have known that delay in examination of the exhibits submitted from the victim would lead to degeneration of the same which would result in lack of forensic evidence linking the appellant to the commission of the offence. Such complicity to defeat the ends of justice cannot work in favour of the appellant. Despite her misconduct, the case file was only removed from the said Police Officer after the victim's mother complained to the Prosecutor that the said Officer should be removed from this case. The case file was then moved from Nyali Police Station and handed over to the OCS Makupa Police Station who assigned it to another Police Officer.

47. This court sees no other sentence that is befitting the appellant other the life sentence which he is currently serving. I uphold the conviction and the sentence. This appeal is dismissed in its entirety. The appellant has 14 days right of appeal.

DELIVERED, **DATED** and **SIGNED** at **MOMBASA** on this **14th** day of **February, 2020.**

NJOKI MWANGI

JUDGE

In the presence of:-

Appellant present in person

Ms Mwangeka, Prosecution Counsel for the DPP

Mr. Mohamed- Court Assistant