



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**HCCRA NO. 212 OF 2017**

**MK.....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Kabarnet Cr. Case no. 50 of 2016 delivered on the 10<sup>th</sup> day of February, 2017 by Hon. S.O Temu, PM]**

**JUDGMENT**

1. The appellant was convicted and sentenced to imprisonment for 15 years for the offence of defilement contrary to section 8 (1) as read with 8 (4) of the Sexual Offences Act, although he had been charged under section 8 (1) 8 (3) of the Act, the trial Court finding that in accordance with the proved age of the complainant at 16 years at the time of the offence, the correct provision was 8 (4) of the Act and not 8 (3) of the Act.

2. The appellant appealed on ground set out in the Petition of Appeal as follows:

1. The learned Trial Magistrate erred in law and fact by convicting the appellant on a defective charge sheet.
2. The learned Trial Magistrate erred in law and fact by convicting the appellant on the uncorroborated evidence of the complainant which were contradictory and unreliable.
3. The learned Trial Magistrate erred in both law and fact by finding that the prosecution had proved its case beyond reasonable doubt.
4. The learned Trial Magistrate erred in both law and fact by failing to take into consideration the appellant's defence which was uncontroverted by the prosecution thereby arriving at a manifestly wrong conclusion that the appellant was guilty.
5. The learned Trial Magistrate erred in both law and fact by relying on the conflicting evidence of the Clinical Officer in finding that the complainant was defiled.
6. The learned Trial Magistrate erred in both law and fact by sentencing the appellant on a charge not before the Court.

3. At the hearing of the appeal, the Counsel for the appellant and for the DPP made oral submissions as follows:

“Mr. Chebii for Appellant

Appellant was charged in Cr. Case KBT 50/2016 with defilement contrary to section 8 (1) as read 8 (3) of Sexual Offences Act.

Charge is shown as aged 16 years. The appellant sentenced to serve 15 years.

Appeal for conviction

6 grounds of appeals.

4 main grounds of appeal. We shall urge the following:

1. Defective charge
2. Age
3. Defence evidence
4. Corroboration

#### Defective charge

The age of 16 years is not the one under section 8 (3) of Sexual Offence Act. It was not under section 8 (4) of the Sexual Offences Act as the charge was not amended. It was wrong for the trial Court to amend the charge suo moto and convict him without giving appellant opportunity to respond to the charge.

#### Age of the complainant

The age is important as the age determines the sentence. On 3/1/15, the complainant was said to be 16 years when she gave evidence on 16/5/16, 1 year later. She said she has 16 years again. On cross-examination she said she was born on 1998 and was 18 years then. She later changed and said "I was 17 years in 2015." "By January I was sixteen years, now I am 18 years." 3 versions of age is given as 16, 17 and 18 years.

Birth Certificate was in question as it was produced for purposes of registration of KCPE. She repeated a class because the witness gave merely 4 versions of age. The Prosecution should have taken her from age assessment. This was not done.

On cross-examination, the complainant said she was born at home, and her mother knows the age. The mother did not testify. We urge that the Pw2 Clinical Officer said she is 16 years, it was unsafe to convict the appellant.

#### Corroboration

Pw1 on 3/1/15 had gone to sell at Kabartonjo. She did not indicate where she was between 9.00 a.m and 9.00 pm where she was during the time upto 9.00 pm.

After she was defiled she said she went home and told her mother. Her mother did not testify. She did not show where she was after the market closed.

The trial Court erred in stating that the doctor's medical report corroborated it. The complainant was examined at Kabartonjo hospital and the doctor did not testify. In the treatment the doctor states hymen absent, while discharge. This was at Kabartonjo.

When examined by Pw2, it was said that she went for treatment at Baringo Referral Hospital. There are no treatment notes and reference no. 641 in filling the p3 form. The proper person to fill the same was the Clinical Officer at Kabartonjo.

Hymen broken – Pw2's words are different from hymen absent. When one states hymen absent means there was no hymen when it is hymen broken, it is suggested there was remains of the broken.

Prosecution failed to prove when the hymen was broken. There is a conflict between treatment notes and the P3 form. There was no corroboration. The Prosecution should have shown when defilement took place.

The belief that the witness was telling the truth. It was a boy child who had been sworn. In using the statement of the appellant to convict him. The Court used facts out of the defence. The appellant was explaining where he caught the lady at night. The Court erred in concluding that the accused assaulted the complainant and because he had assaulted then he must have defiled her. There was no charge of assault. It was only defilement. I urge that the appellant be acquitted.

#### Miss Macharia

Appeal is opposed

Appellant convicted of defilement for section 8 (1) (4) of Sexual Offence Act.

Defective charge. The charge read 8 (3) as opposed to 8 (4) of the Sexual Offences Act. The right section as 8 (1) was read with 8 (4). Date of birth was 6/6/1998. The contradiction on the age, she indicated she was born in 1998, corroborated by the birth certificate which is on conclusive proof age and there was no need of other evidence.

No objection to the Certificate of Birth at the trial Court. It could be raised at the applied Birth Certificate produced for registration of KCPE. It is not relevant.

Evidence against appellant irrespective of error of charge sheet show the complainant was 16 years and she was defiled by appellant.

Section 8 (4) is the applicable with section and it was the section under which he was convicted. There was no prejudice. Section 382 Criminal Procedure Code, no error in the charge sheet as age was proved and he was convicted on the corrected provision we urge the Court to correct charge and sentence.

#### Defilement proved

Whether hymen was broken or absent means that there was interference with hymen.

Injuries were corroborated by Pw2 who produced P3 form. Pw2 testified that on examination the complainant had a torn blue jeans bruised neck and bruised neck right buttock. Hymen absent and he indicated that there was defilement. In his defence appellant acknowledged that he was with complainant at the material time that she was defiled.

#### Corroboration

Pw2 corroborated evidence of Pw1 complainant. In section 124 of the Evidence Act provides for corroboration not being necessary in sexual matters Evidence was overwhelming and the sentence was the minimum sentence of 15 years.

#### Mr. Chebii

Defence is that improbable case of the Prosecution Defective charge was to the root of the charge sheet and it must be set aside. The Court did not explain why he changed the charge from section 8 (3) for 8 (4).”

4. Consistently with the duty of the first appellate Court, I have re-evaluated the evidence presented before the trial Court before considering whether to uphold or set aside the conclusion of the trial Court in its judgment subject of the appeal herein.

#### The law

5. In accordance with section 134 of the Criminal Procedure Code, the object of a charge is to give reasonable information as to the nature of the offence charged as follows:

#### **“134. Offence to be specified in charge or information with necessary particulars**

Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars **as may be necessary for giving reasonable information as to the nature of the offence charged.”**

6. An error in the statement of the applicable provision of law in the statement of the offence under section 137 (a) of the Criminal Procedure Code may only be fatal, if it does not thereby afford the accused “*reasonable information as the nature of the offence*” and thereby causes prejudice to the accused which is not curable under section 382 of the Criminal Procedure Code, which provides as follows:

#### **“382. Finding or sentence when reversible by reason of error or omission in charge or other proceedings**

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, **unless the error, omission or irregularity has occasioned a failure of justice:**

**Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.”**

7. In this case, the offence was clearly stated to be one of the defilement and the only error was in the subsection of the law providing for defilement in age – specific cases. The charge read as sub-section (3) of section 8 which provides for defilement of children aged 12 – 15 while the correct sub-section in the circumstances of the case was 8 (4) which made provision for offence of defilement of children aged 16 – 18 years.

8. No prejudice could be shown to have been suffered by the appellant in this case as the particulars of the offence clearly charged an offence under section 8 (4) of the Sexual Offences Act, as follows:

“On the 3<sup>rd</sup> day of January 2016 at 2100 hrs at Kabartonjo division in Baringo North Sub-County within Baringo County did unlawful and intentionally cause his penis to penetrate the vagina of DL **a girl aged 16 years in contravention of the act.**

Section 382 of the Criminal Procedure Code prohibits reversal, alteration or revision of a finding, sentence or order of the trial Court where any error, omission or irregularity causing the same does not occasion a failure of justice.

In this case, the appellant was convicted and sentenced under the correct provision of the law in 8 (4) of the Sexual Offence Act on the basis of the evidence the trial Court found proved. There was no failure of justice.

9. The trial Court was within the provisions of section 179 (2) of the Criminal Procedure Code in convicting for the lesser/minor offence under section 8 (4) of the Sexual Offences Act even though he had not been expressly charged with defilement under that section. Section 8 (4) of the Sexual Offences Act which provided for a sentence of imprisonment for 15 years, relative to the imprisonment for 20 years for the offence of defilement under section 8 (3), was obviously a lesser offence.

10. As regards the age of the complainant, the Prosecution produced a Birth Certificate issued by the Registrar of Births in Baringo District no. [particulars withheld] dated 30/4/2012. Under the Birth and Deaths Registration Act, which provides that the Certificate is evidence of the dates and facts there in contained, without any other proof of such entry. In addition, section 83 of the Evidence Act provides for presumption of validity of public documents as follows:

**“83. Certified documents**

1. The Court shall presume to be genuine every document purporting to be **a certificate**, certified copy or other document which is-

**a. declared by law to be admissible as evidence of any particular fact; and**

b. substantially in the form, and purporting to be executed in the manner, directed by law in that behalf; and

c. purporting to be duly certified by a public office.

2. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such document.”

It was not shown that the Birth Certificate was invalid, and the Birth Certificate is admissible as evidence of age under the Births and Death Registration Act.

**On the facts of the case**

11. The complainant related the events of the alleged defilement in the testimony of Pw1 as follows:

“PW1

My name is DL

I am 16 years

I am student [particulars withheld] Secondary School in form three.

I know the accused herein.

He is my neighbor and cousin. On 3/1/15 at about 9 pm I was from Kabartonjo going home. I had met the accused and he greeted me.

He passed me and I went.

When I walked for a while I had heard something holding my neck and when I turned I found it was the accused and he had tied my neck with his belt.

He had kicked me and he hit me with his fist.

I picked a stick to fight but the accused pushed me to the bushes and he had bitten my ear.

The accused had held me on the neck and I started to bleed and he struggled to struggle me.

The accused had tied my leg with the belt.

I asked him why he wanted to beat me and he stated that even if I was to scream nothing was to happen.

He had torn my trouser and he removed penis and he entered it into my vagina.

When the accused finished what he was going to kill me as nobody had seen us.

I informed him what I was not going to report so that he should not kill me.

I asked to give me my trouser and he gave it and I home and I informed my mother.

The following day I went to Kabartonjo police station where I reported and I was taken to hospital and I was later taken to Kabarnet hospital.

The accused had disappeared from 4<sup>th</sup> January to October 2015 when he came back.

He used to hide and one day I saw him at the Centre and he continued to hide in different homes so that he should not be seen.

One day at 7 pm he was found by some elders who held him and the accused's family had attacked the youth policy and the accused escaped and he came to our home and he had attacked my mother, father and children.

The accused continued to look for us and we moved from our family and we went to stay at our uncle's home.

Even today we came from our uncle's home as the accused will kill us.

Treatment notes are marked as PMFI – 1

P3 form

PMFI – 2

Post Rape Form

PMFI – 3

Torn trouser

PMFI – 4

I was injured on the back and waist. I have not fully recovered. We had met at 9 pm. There was moon light on that day and I was able to identify the accused.

Accused is identified in Court.”

12. The Clinical Officer (Pw2) testified as to the medical examination results on the complainant as follows:

“PW2

My name is Benjamin Kendagor.

I am Clinical Officer attached to Kaptimbor Sub-County hospital and I used to be at Baringo County referral hospital.

I have P3 for DL aged 16 years old resident of [particulars withheld] dated 7/1/15.

She complained that she was assaulted by person known to her on 3/1/15.

She had been treated at Kabartonjo hospital and she was given number 87/15 dated 5/1/15.

She was treated Baringo County referral hospital on 6/1/15 and she was given no 641/15.

She was in torn blue jeans trouser.

Upon Examination she had bruised to the neck.

She had bruises to the right buttocks.

Her hymen was absent.

Both labial minora were swollen with white discharge.

I tested her for HIV and she was negative. Pregnant test was negative and urine was clear.

The incident was past 72 hours and thus she was not put on treatment.

On the strength that the complainant had bruises to the neck and buttocks I concluded that she had been assaulted.

In the assessment of the hymen and swollen minora I concluded that she had been defiled.

I prepare P3 dated 7/1/15.

The P3 is produced as exhibit P1

I have the Post Rape Form and medical records dated 5/1/15.

The same were for defilement by a person known to the complainant.

She struggled before she was defiled.

She had bruises to the neck and it was swollen.

The hymen was absent and she had whitish discharge.

I wish to produce the treatment notes as an exhibit.

The same are produced as exhibit P2.

I have the Post Rape Care Form for the complainant herein dated 7/1/15.

She had physically assaulted and raped by a male person aged 22 years.

The incident had taken place at [particulars withheld] on foot part.

The perpetrator had used his belt to struggle her.

The complainant had been seen at Kabartonjo.

She had injuries to the neck and buttocks.

She had taken bath.

She was in torn jeans trouser. She had been treated and all relevant tests conducted.

I signed the form on 7/1/15 in the presence of Evaline Agufa.

The form is produced as exhibit P3.

Cross-examination

The complainant stated that she was defiled on 3/1/15.

She was first seen at the hospital Kabartonjo on 5/1/15.

I had seen the injuries at the buttocks when I examined the complainant.

I indicated that the hymen was broken.

As per the treatment notes from Kabartonjo it is indicated that the hymen was absent.

I indicated on the P3 that the hymen was broken.

I had filled the Post Rape Form.

I indicated that the hymen was absent on the Post Rape Care Form.

The complainant had come to the hospital on 6/1/15 and I filled the P3 on 7/1/15.

On the basis of the broken hymen and the labia minora was swollen I stated the complainant was defiled.

The complainant was defiled.

The complainant stated that she was about 16 years.

Prosecution – No Re-Examination.”

13. When put on his defence, the appellant gave sworn testimony as follows:

*“DW1*

*My name is MK.*

*I am resident of [particulars withheld].*

*I am casual worker.*

*The charges are not true.*

The complainant is my cousin.

On the date of incident 3/1/15 I had woken up and took breakfast and I went to look after cows.

The complainant’s father came and informed me that the complainant has gone to the market and he had not come back.

I asked him that I was to milk the cows first before I could help.

The said father came back at 7 pm and he asked me to go and look for the complainant.

I went using a motor cycle to Kabartonjo to look for the complainant and I reached there at 8 pm.

I inquired and I was informed by one person in an electronic shop that the girl has taken his phone and she left.

I had then walked home and at about 9 pm I heard people talking in the bushes.

I was able to see the complainant with his boyfriend in the bushes.

I had got hold the complainant and I had slapped her.

I took her home with her shopping and the father wanted to beat her up but I asked him not.

The father had canned her the following day and that had made the father to differ with the mother.

I stayed and I find work at Eldoret to take care of cattle and I went and stayed there for six months.

When I went back home I was arrested by police officers at Kabartonjo and they informed me that I knew my mistake.

I did not ran away as alleged by the complainant.

I did not see the cloths that were produced in Court but it is not true that I had torn it.

The complainant left school and she is now rooming.

I did not hear that the complainant had gone to the police station on 6/1/15 to complain.

The complainant is 20 years old.

It is not true that she is 16 years old.

I am 25 years old.

It is not true that the complainant was born in 1998 as per the birth certificate.

The complainant's father is PCC.

I did not rape the complainant but I had slapped her because I had spent my money Ksh 600/= to look for her.

The complainant's father is my witness I will call him as witness.

The complainant's mother went to her home and she left the complainant at her home.

Cross-examination

I had flashed a mobile phone torch to the complainant.

The complainant was with her boyfriend ML.

The complainant is 20 years old as I know her since she was born.

I was not there when she was born.

The complainant was wearing a white skirt when I took her home and a black sweater.”

14. With respect, the submission about absent, or broken hymen or no hymen is not determinant in this case. Of course, defilement may yet occur with old broken hymen; the offence is the sexual intercourse with a child aged under 18 years without regard whether her hymen is freshly torn or old broken. The freshness of the hymen tear only goes to prove recent penetration but penetration may amount and account to the offence of defilement even in circumstances of previously torn hymen.

15. In view of the defence that the appellant had only assaulted his cousin complainant when he found her with the boyfriend, the Court should have examined the evidence of the alleged defilement closely. The Clinical Officer who filled the P3 report and on examination found “*hymen broken, labia majora hyperanemic (swollen)*” admitted that he examined the complainant on 7/1/2005 over 72 hours after the alleged defilement on 3/1/2015. Is it possible that the swelling could be seen 4 days after alleged defilement?

16. The Prosecution evidence did not explain the injury on the buttock as shown on the Post Rape Care form and the P3 form. The evidence of Pw1 did not mention any injury to the buttock when she said:

“When I walked for a while I had heard something holding any neck and when I turned and found it was the accused and he had tied my neck with his belt. He had kicked me and he hit me with his fist. I picked a stick to fight but the accused pushed me to the push and he had beaten my ear. The accused held me on the neck and I started to bleed and he struggled to strangle me. The accused had tied my leg with the belt. I asked him why he wanted to beat me and he stated even if I was to scream nothing was to happen. He had torn my trouser and he removed his penis and he entered it into my vagina.”

17. Until the alleged act of defilement, the evidence of Pw1 set out above is consistent with a fight between the two cousins and it lends credence to the testimony of the appellant that:

“I had then walked home and at about 9 pm I had heard people talking in the bushes. I was able to see the complainant with her boyfriend in the bushes. I had got hold of the complainant and I slapped her. I took her home with her shopping and the father wanted to beat her up but I asked him not. The father had canned her the following day and that had made the father to differ with the mother.”

18. The evidence raises doubt as to whether the alleged defilement took place and I give the benefit of the doubt to the appellant.

19. With respect, the trial Magistrate erred in relying on section 124 of the Evidence Act when he held as follows:

“Upon hearing the entire evidence tendered by the prosecution and the defence it was clear that the accused and the complainant were together on the date, time of incident.

The issues for determination were.

1. Whether the accused had defiled the complainant when he met her on the date of incident.
2. Whether the complainant's sole evidence was enough to attract a conviction.
3. Whether the complainant's evidence was contradicted by the defence that was tendered.
4. Whether the complainant was 16 years when she was allegedly defiled. The defence submitted that the prosecution did not prove their cases as required as Pw1's evidence was not corroborated as required as the mother to who the incident was reported was not summoned to testify after recording statements with the police.

The defence submitted that the doctor who saw the complainant at Kabartonjo had indicated that there was no hymen where the doctor who saw her at Kabarnet had indicated that the hymen was broken.

The defence stated that the two terms were not the same.

The defence submitted too that the Clinical Officer who testified had indicated that the hymen was absent which contradicted his statement on the P3 that the hymen was broken. The defence submitted that the treatment notes were the true position that the hymen was absent.

The defence cited the case before the High Court in Kisii Criminal Appeal No. 252/2011.

The defence stated that the private parts had no injuries and discharge could occur due to several reasons.

The defence stated further that the accused had been sent to look for the complainant by her father and when he found her with the boyfriend he had beaten her up but he did not defile her and that the complainant had reported the case to cover herself from punishment from her father.

From the above submission by the defence there was no doubt that the accused was with the complainant on the date of incident and that he had beaten her up

The complainant was a cousin to the accused and she was 18 years at the time of trial and in form three. She narrated to the Court as to what happened through sworn evidence and she was Cross-Examined by the defence advocate but she had stood firm on her evidence that indeed the accused had defiled her after beating her and that the accused has ran away after the incident to which the accused stated that she had gone to look after animals in Eldoret.

The complainant to me was truthful without any doubt.

The complainant evidence flowed without hesitation or fear.

The complainant attacked the Court as a bright girl and truthful all through while on the stand.

She stated that her mother had moved out to their homes as a result of the incident as the accused was her cousin and their family had become hostile and that was why she did not come to Court to testify even after recording statements as per the defence submission.

**I will invoke the provision of section 124 of the evidence act and state that the evidence of Pw1 was good enough to confirm that indeed she was defiled by the accused.**

The Clinical Officer who testified in Court stated that when he observed the complainant private part the hymen was absent and or broken and that there was whitish discharge from her vagina and she had a swollen minora. By that evidence the Clinical Officer concluded that the complainant had been defiled. It was not thus true that the conclusion was arrived at without evidence of injuries.

The presence of discharge and swollen minora was evidence enough to confirm that indeed there were activities to the complainant's private part vagina and the Clinical Officer was right to indicate that indeed there was defilement.

The prosecution availed a certificate of birth to indicate that the complainant was born on 6/6/1998 and she was defiled on 3/1/15. That was clear that she was within 16 years.

I thus found that the prosecution had proved the case beyond reasonable doubt that the complainant was a minor and she was defiled by the accused.

I thus find the accused guilty and convict him for the offence of defilement contrary to section 8 (1) and 8 (4) of the Sexual Offences Act as charge."

20. Section 124 of the Evidence Act applies where the only evidence available is that of the alleged victim of Sexual Offence as follows:

**"124. Corroboration required in criminal cases**

*Notwithstanding the provisions of [section 19](#) of the Oaths and Statutory Declarations Act ([Cap. 15](#)), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, **the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:***

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

In this case, there was other evidence, that of the medical examination by Pw2, only that it did not sufficiently support the alleged defilement, and that of the appellant in defence. The trial Court did not examine the appellant's defence in detail to discharge it as incapable of answering the allegation of the defilement by the Prosecution. The appellant's defence remained unchallenged and forceful to warrant the giving of the doubt to the appellant.

21. The Prosecution evidence, however, proved, and the defence evidence admitted, assault on the complainant, which could not be justified on the ground that the appellant had found her cousin with her boyfriend in the bushes. In accordance with the law, the appellant is guilty, although not charged with the offence, of assault causing actual bodily harm contrary to section 251 of the Penal Code, in view of the bruises on the complainant's neck and injury on the buttock.

22. The appellant will therefore, be acquitted of the offence of defilement but convicted of the offence of assault causing actual bodily harm.

### **Conclusion**

23. From the evidence before the trial Court, the serious offence of defilement was not proved. The trial Court, did not consider the possible defence of the appellant and its invoking of the provisions of the section 124 of the Evidence Act in this case, where the evidence of the complainant was not the only evidence available to the Court, was improper. Careful consideration of the evidence before the trial Court as required by the serious nature, and consequences of conviction for the offence of defilement, raises a doubt as to whether the appellant did have any sexual intercourse with the complainant, which could be basis of the charge of defilement in the main count or the alternative charge of indecent act with a child.

24. However, the evidence adduced before the trial does proves, with the meaning of section 179 (2) of the Criminal Procedure Code, a complete minor offence of assault causing actual bodily harm, which although not charged could be the basis of conviction under the said section, which provides as follows:

**“179 (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.”**

### **Orders**

25. Consequently, while the appellant's conviction for the offence of defilement contrary to section 8 (1) and 8 (4) of the Sexual Offences Act is quashed and the sentence of imprisonment for 15 years set aside. The appellant is, pursuant to section 179 (2) of the Criminal Procedure Code, convicted for the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.

26. The appellant shall for the offence of assault causing actual bodily harm contrary to section 251 of Penal Code serve, considering the facts of being a first offender and in mitigation, a sentence of imprisonment for a period of 3<sup>1</sup>/<sub>2</sub> years from the **6/3/2017**, the date of sentence before the trial Court.

*Order accordingly.*

**DATED AND DELIVERED THIS 22<sup>ND</sup> DAY OF MAY 2019**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances:**

Mr. Chebii for the Appellant.

Ms. Macharia, Ass. DPP for the Respondent