



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL APPEAL NO. 107 OF 2018.

DANIEL CHIRA KAMAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal arising from conviction and sentence of the Resident Magistrate

Hon. R. Amwayi delivered on 6th December 2018 in MOLO SOA No. 134 of 2018.)

JUDGMENT

1. The appellant was charged with **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 being that on the 5th day of December 2018, at [particulars withheld] Village in Londiani Sub County within Kericho County, the appellant unlawfully caused his penis to penetrate the vagina of MK a child aged 14 years old.

2. He also faced an alternative charge of **indecent act** with a child contrary to **Section 11** of the **Sexual Offences Act No. 3 of 2006**. The particulars being that on the 2nd of July 2014 at [Particulars withheld] Village in Londiani Sub County within Kericho County, the appellant unlawfully touched the vagina of MK a child aged 14 years old.

3. The charge was read to the appellant on 6th December 2018 who responded by saying it is true. The trial magistrate entered plea of guilty after explaining the severity of the charge to the accused who responded it is true. Facts were then read to the appellant who responded that the facts were true and correct. The court entered plea for guilty. Prosecutor said he did not have the appellant's record.

4. In mitigation, the appellant asked for forgiveness and said he did it due to the devil. The court then recorded that it had considered the appellants mitigation and sentenced him to 20 years imprisonment.

5. Thereafter the appellant filed appeal on the grounds:-

- i. That the trial magistrate erred both in fact and law by failing to appreciate that the age of the child was not substantially proven.
- ii. That the trial magistrate erred both in fact and law by failing to find that the medical evidence of the adduced was not sufficient to corroborate charges.
- iii. That the trial magistrate erred both in fact and law by failing to warn the appellant of the gravity of the matter and the severity of the sentence.

6. The appellant opted to proceed orally with the appeal. In his submission, the appellant sought retrial and indicated to court that the police lied to him that he would be released if he pleaded guilty.

7. In response, **Mr. Limo** for the state submitted that the severity of the charge was explained to the appellant.

8. The appellant in response reiterated his plea to have the matter referred to the lower court for hearing. He added that he did not see the child's P3 and PRS.

ANALYSIS AND DETERMINATION

9. I have perused the lower court record and note that even after the trial magistrate explaining to the appellant the severity of the offence, he still pleaded guilty. Facts were also read to him, which he confirmed were true. There is no indication in the record that the appellant did not

understand the charges. He said he did not have the charge sheet but all details of the facts are on record. Patient treatment records were produced. On age of the minor birth certificate indicating she was 14 years was produced in court. It is not therefore true that the age of the minor was not proved. After being asked whether the detailed facts were correct, the appellant said “**the facts are true and correct**”. I find that the allegation that police lied to him that he would be released if he pleaded guilty is an afterthought. In mitigation, he asked for forgiveness saying “he did due to the devil.” This is confirmation that he committed the offence and knew what he was pleading to.

10. From the foregoing, I see no merit in the appeal both on conviction and sentence.

11. FINAL ORDERS

1. Appeal is hereby dismissed.

Judgment dated, signed and delivered at Nakuru this 19th day of Sept. 2019

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RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer – Court Assistant

Appellant present in person

Nyakira for State