

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CRIMINAL APPEAL NO. 98 OF 2016

BETWEEN

WILLIAM OUMA OLAMBO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence

dated 11th April 2016 in Criminal Case No. 268 of 2015

in Ukwala Law Court before Hon. C.N. Wanyama, RM)

JUDGMENT

1. The appellant, **WILLIAM OUMA OLAMBO**, was charged and convicted of the offence of defilement contrary to **section 8(1) and (3)** of the ***Sexual Offences Act***. It was alleged that on diverse dates between 20th June 2015 and 25th June 2015 at [particulars withheld] East sub-location, Ugenya sub-county, the appellant caused his penis to penetrate the vagina of AAO, a child aged 15 years. The appellant was sentenced to 20 years' imprisonment.

2. The evidence against the appellant was that he had taken the child, PW 1 as his wife. She testified how she stayed with him, cooked for him and was even accepted by the mother. PW 1 also told the Court that the appellant had sex intercourse with her several times. The information that the appellant had taken PW 1 as his wife was reported to PW 3, a police officer at Tingare Police Base by the area Assistant Chief. On 25th May 2015, he together with other officers went to the appellant's home where they found the appellant and PW 1 asleep. This fact was confirmed by PW 1 in her testimony. PW 1 was examined by the Clinical Officer, PW 2 at Ambira Sub County Hospital and he confirmed PW 1 had had sexual intercourse before. Her genitalia were normal and hymen absent.

3. In his defence, the appellant admitted that he was arrested on the material day but that a girl was brought by police to his room. He stated that she had been married elsewhere.

4. Having reviewed the evidence, it is clear that PW 1 and the appellant were living together as man and wife, a fact confirmed by PW 3 when he found them together. PW1's testimony was clear and consistent and in light of the evidence, the appellant's defence was light and could only be rejected. PW 1 testified that she was 15 years in Class 4 and so did the age assessment on the P3 Form produced by PW 2. It is trite law that a child under the age of 18 cannot consent to sexual intercourse.

5. The appeal is dismissed.

DATED AND SIGNED at SIAYA this 2nd day of February 2018.

D. S. MAJANJA

JUDGE

Appellant in Person

Ms Odumba, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State.

Court Assistants: Laban O. Odhiambo, Leonidah Atika