



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 11 OF 2017**

**EZEKIEL KIPLANGAT TANGUS.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

***(Being an appeal from the original conviction and sentence in Criminal Case No. 15 OF 2016 PM's Court Bomet- Hon Achieng PM)***

**JUDGMENT**

The appellant hereinabove mentioned was convicted and sentenced to 15 years imprisonment for the offence of defilement Contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006.

The particulars are that on the 22<sup>nd</sup> day of December 2015 at [particulars withheld] within Bomet County he intentionally caused his penis to penetrate the vagina of S C a child aged 15 years.

The prosecution called six witnesses in support of their case where the defence called one.

This being the first appellate court, it has a duty to evaluate and reconsider the evidence on record so as to arrive at its own conclusion bearing in mind that it did not have the opportunity of observing the demeanour of the witnesses.

**Brief facts**

The complainant at the time of adducing evidence was of the age of 16 years. She told the court that she was a form III student at [particulars withheld] Secondary School. She also testified to have been born on 27<sup>th</sup> August 2000.

In her evidence in chief the complainant testified to have gone to [particulars withheld] shopping centre to grind maize. At about 7.00 p.m she was on her way home. The appellant whom she knew before followed her he disappeared for some time but suddenly emerged ahead of her. He got hold of her by the neck and wrestled her down. He undressed her. He also unzipped his trouser, removed his penis and inserted it into her vagina. He had sexual intercourse with her for three hours. She later struggled and managed to run away leaving her maize flour and vegetables behind. She proceeded to nearby homes and informed one J that Ezekiel Tangus had beaten her. In his company, they proceeded to the scene and recovered the maize flour and vegetables. She proceeded home and informed her mother of what had taken place. She was taken to Longisa Hospital for treatment. She was issued with a P3 form. Later the appellant was looked for and arrested as he had gone into hiding.

The main ingredients of defilement are:-

- (1) *Age assessment*
- (2) *Penetration*
- (3) *Corroboration*
- (4) *Identification*

**Age assessment**

The complainant did testify that she was born on 27<sup>th</sup> August 2000. A birth certificate was produced in court as P. Exhibit No. 1. It shows the date of birth of 27<sup>th</sup> August, 2000. The offence of defilement is indicated to have been committed on 22/12/2015. This places the age of

the complainant at the time of the defilement at 15 years.

#### Penetration

The complainant had testified of how the appellant undressed her and also proceeded to undress himself and inserted his male organ into hers and he had sexual intercourse with her for close to three hours. When she managed to entangle herself and escaped.

The clinical officer who examined her found that she had thorn pricks on the legs and thighs. She had bruises on the labia majora and labia minora. There was positive clinical evidence of penetration from the above, there is corroboration as to penetration.

#### Corroboration and identification

The Appellant was known by the complainant before, as a neighbour. The incident took place at about 7.00 p.m. The incident took more than two hours. There was enough and ample time for the complainant to observe the features of the appellant. She had first seen him following her, on her way home, before he later pounced on her and defiled her. After the incident she reported to J K (PW3) that it was Ezekiel Tangus who had attacked her. They went to the scene but did not find him. When she reported the matter to her mother she readily mentioned Ezekiel Tangus as the man who had attacked her. The appellant disappeared in the village from the time of the offence to that of his arrest.

I am satisfied that all the ingredients of defilement were proved beyond reasonable doubt. The conviction was safe and the sentence lawful. Both are upheld. The appeal is dismissed.

Judgment delivered dated and signed this 15<sup>th</sup> day of November 2017 in the presence of learned counsel for the prosecution, Mr. Barasa. The appellant in person present. Court assistant Rotich.

**M. MUYA**

**JUDGE**

**15/11/17**