



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 15 OF 2017**

**NICODEMUS KIPKIRUI LANGAT ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(Being an appeal from the original conviction and sentence in Sotik SRM court Cr. Case No. 31 of 2014 – Hon. Oruo RM)**

**JUDGMENT**

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

The particulars being that on the 15<sup>th</sup> April 2014 at [particulars withheld] township – Kiptunal location, Konoin Bomet County, he intentionally and unlawfully caused his penis to penetrate the vagina of S.C a child aged 13 years.

This is the first appellate court. It has a duty to re-evaluate and analyse the evidence on record so as to arrive at its own conclusions but bearing in mind that it did not have the opportunity to observe the demeanor of the witness – Okeno .V. R 1972 EALR

The prosecution in this case called five witnesses whereas the defence called three.

**BRIEF FACTS**

The complainant at the time of the incident of defilement was a standard seven pupil aged 13 (thirteen years.) Her compound at home borders another where a lady called Chepkorir was staying. In her evidence in examination in chief she testified that on the 15<sup>th</sup> day of April 2015, the said Chepkorir called her into her compound. She obliged and proceeded there. Chepkorir opened her house and let her in. While inside she gave her a photo album to see pictures and locked her from outside. Meanwhile she let in Nicodemus. Nicodemus proceeded to undress her. He also undressed and they slept on the bed of Chepkorir. He proceeded to insert his penis into her vagina and they had sexual intercourse three times. They later left. She found Sharon outside the house. She left for home and did not report the incident to her mother.

The incident took place on a Tuesday and the matter was reported to her mother by Sharon on a Friday upon which the matter was reported to Mogogosiek police station and she was taken to Mogogosiek Health Centre for examination and treatment.

Sharon Chelangat (PW2) a tea picker at Kimale was on the 15<sup>th</sup> April 2014 in her house at Mogogosiek when she saw a child by the name of C go to Chepkorir's house who opened for her. After a short while she saw Nicodemus enter into the said house. He spent some time while in the said house. She was attracted to the house when she heard screams. She went nearby and ascertained that the screams were emanating from Chepkorir's house and that they were from C. The door was opened and Chebet came out and went her way. On 18/4/2014 she met C's mother in the trading centre and she reported to her of what she had observed.

She testified that she knew Nicodemus as he used to work at Mogogosiek trading centre. He was later arrested and charged.

L C C (PW3) is the mother of the complainant. She produced a certificate of birth which showed that the complainant was born on 8<sup>th</sup> January 2001.

The medical officer who examined the complainant found that there was lacerations on the labia majora and there was presence of whitish discharge from the vagina. He was of the opinion that there was penetration.

The appellant testified to have been arrested on 18<sup>th</sup> April 2014 by police officers who were in the company of a lady who demanded to be given Ksh.20,000/= for something he did not know.

He did not have the money and he was charged with this offence.

DW2 testified to have been with the accused on 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 17<sup>th</sup> April 2014 harvesting potatoes at Merigi. He further told the court that he had not visited him at Mogogosiek where he was a boda boda rider.

He further testified that they would harvest potatoes upto 10:00 am thereafter he would go away.

The main ingredients for defilement are

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

#### **Identification**

This incident took place in broad daylight. The time was around 3:00pm. Though the complainant did not know the appellant before she had ample time and opportunity to observe closely his features while they were at close quarters inside the house of Chepkorir their neighbor.

The Accused was known by Sharon (PW2) before the incident. Sharon did testify of seeing him enter into Chepkorir's house and coming out.

#### **Corroboration and penetration**

The evidence of the complainant that the accused had sexual intercourse with her was corroborated by that of the clinical officer who upon examination found that she had lacerations on her labia majora which suggested that there was penetration. Her evidence was also corroborated by that of Sharon who observed the complainant enter into the house of Chepkorir being followed by the appellant.

They stayed in the house for some time before she heard screams and the complainant came out.

#### **Age**

A birth certificate was produced in court which showed the complainant to have been born on 8/1/2001.

This incident is said to have taken place on 15/4/2014, by deductions, therefore, the age of the complainant was 13 years.

I am satisfied that all the ingredients of defilement were proved beyond reasonable doubt.

The complainant was aged 13 years. The minimum sentence provided for by the law is 20 years. The appellant was sentenced to twenty years imprisonment.

The conviction was safe and the sentence lawful. Both are upheld.

The appeal has no merit and is disallowed.

**Judgment delivered dated and signed in open court this 13<sup>th</sup> day of June 2018 in the presence of learned counsel for the prosecution Mr. Wawire, the appellant in person. Court assistant, Mercy.**

**M. MUYA**

**JUDGE**

**13/6/2018**