



**REPUBLIC OF KENYA**

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

**HCCRA NO 6 OF 2017**

**[FORMERLY NAKURU HCCRA 89 OF 2016]**

**SAMUEL KAMAU MIGWI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The appellant was charged with defilement of a child contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act No. 3 of 2006 and an Alternative charge of committing an Indecent Act with a child contrary to section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars were that Samuel Kamau Migwi on the 10<sup>th</sup> day of November, 2013 in Koibatek District within Baringo County unlawfully committed an act which caused his penis in the vagina of M.W a child aged 9 years. The particulars of the alternative charge were that Samuel Kamau Migwi on the 10<sup>th</sup> day of November, 2013 in Koibatek District within Baringo County intentionally caused his penis to touch the vagina of M.W a child aged 9 years with his penis.

**Grounds of Appeal**

2. The appellant through his amended grounds of appeal challenged the conviction and sentence of life imprisonment meted by the trial magistrate and stated that the trial magistrate erred in both law and in fact as follows:

1. Prosecution's medical evidence was poor and unsound.
2. Complainant's age was not positively proved.
3. Purported clinical officer is not certified, qualified not registered thus was incompetent to prove the intended penetration.
4. Vital witness were not brought to clear doubts.
5. Article 50(2) (g) (h) was infringed or violated.
6. Appellant was not given committal bundles the prosecution relied on their case in violation of Article 50(2) (c).
7. Unreliable prosecution's P3 form (incomplete and inconclusive)
8. Violation of section 210 of the CPC not given opportunity to submit case.
9. Trial failed to see/find that I was sick throughout the proceedings.
10. Variance between particulars of the charge and medical findings.
11. Option and rights to call defence witness was not explained as required under section 211 of the CPC.

**Submission on the Appeal**

3. The appellant and the DPP made submissions of the appeal as follows:

Appellant's written submission

**1. Unsound medical evidence**

The findings of the magistrate was that the hymen was broken thus proving penetration was not founded on sound evidence. The evidence on record goes contrary to the sentiments of PW4 concerning the allegations. See p. 32.

It is evident that evidence of the purported clinical officer PW4 is inconsistent to what was recorded when the girl was first attended to at Eldama Ravine District Hospital.

Section 163 (1) of the Evidence Act provides that of a witness can be tested by his former statements when he goes against them then he is liable to impeachment.

**2. Age of the complainant was not proved**

Proof of age is the only ingredient of establishing the offence of defilement. The victim should be under the age bracket of 18 years and below. Age as part of the charge was not proved. By credible means as the law requires. The girl told the court she was ten years old, the mother PW2 supported the same vide p. 19 she stated she is 10 years old. The alleged clinic card is non-existing throughout the copies of the type proceedings, even if it was it is not a proper mode of determining age of an individual minus a well conducted age assessment examination.

In *Joseph Njiru Kithaka v. R* [2013] eKRL J.f. Muchemi J held: "it is trite law that proof of age can only be established by tendering an age assessment report or birth certificate. The prosecution did not produce any of the two documents. In absence of proof of age, any conviction for the offence of defilement will not be safe."

**3. PW4 is not a clinical officer as purported.**

It is the trial court that identified PW4 as Dr. Arafa and as such is inadmissible to recognize her as a doctor or a clinical officer. Having claimed working for Eldama Ravine District Hospital since 2013 till now contradicts when she says the complainant brought medical chits from Eldama Ravine District Hospital. Section 7 of the Licensing Act provides that a medical practitioner should be soundly Qualified, certified and duly registered by Kenya Medical Practitioner and Dental Union. In *Mutonyi and Jackson Kamande v. R* [1981] KLR J.A Potter held that: "so an expert who hopes to carry weight in a court of law must before giving his expert opinion:

- i. Establish evidence that he is specially skilled in his science or art.
- ii. Instruct the court in the criteria of his science or art so that the court may itself test the accuracy of his own opinion and also form its own independent opinion by applying those criteria's to the facts proved.
- iii. Give evidence of the facts which may be facts ascertained by him or facts reported to him by another witness."

**4. Important witness not summoned**

The people who alleged rescued the minor were not summoned to testify. Pw2 makes hearsay in which evidence is devoid of evidential value. There was a contravention of section 144(1) and 150 of the CPC.

**5. Contravention of Article 50(2) (g)(h) of the Constitution.**

The law requires the accused to be represented by counsel or advocate this was not complied to. It is noteworthy to consider that defilement is a serious case whose consequences are life taking when accused has been found guilty.

It is also observable that the appellant is possessed with severe old age and accompanied by same ailments.

**6. Failure to supply committal bundles**

It is the dictates of the law to supply the accused person with all the relevant evidence the prosecution intends to rely of their case. The provisions of Article 50(2)(c) of the Constitution any proceedings instituted outside the law is a nullity.

**7. Unreliable P3 Form**

The available information is inconsistent to the requirements, likewise the evidence is absolutely scanty and insufficient.

**Prosecution's oral submissions –**

4. Ms Kitilit, Prosecution Counsel responded to the grounds of appeal as follows:

## *“Grounds of appeal*

No penetration. The P3 form indicates that the hymen was intact. However, PW1 states was clear that there was penetration and what the court heard that she felt a lot of pain at “pahali pa kukojolea”.

PW2 testified that there were fluid all over the child and that her thighs looked like seminal fluids. Penetration is not proved by breaking the hymen only. There was penetration even though the hymen was not broken.

### Age of the child

Age was proved. A child health card was produced Exhibit no 3. The child was nine years old.

### Statements

Statement was supplied to the accused according to the record at p. 13 where he applied for the matter to start de novo on 16/4/2013.

Accused charge under section 8(2) of the Sexual Offence Act which a mandatory sentence is life imprisonment.

I submit that the appellant was properly convicted and sentenced. I pray the appeal be dismissed.

### **The Evidence**

5. The evidence before the trial court was as follows:

#### Prosecution’s case

##### **1. PW1 M.W**

*“I come from Makutano and I live with my mother and I school at [particulars withheld] Primary class four. I am ten years old. I do not recall the dates of offence herein. I now I am in court because of the accused herein who did me ‘tabia mbaya’ when I was at home and we were residing at his plot. It was day time and I was with our young child and my mother was not around; I do not know where she has gone. Our small child was outside and Wa Migwi asked me for his cup he had given mother porridge with. I then took the cup to him at his kitchen and I went alone. Migwi was in the kitchen alone. And he lied that I go he sends me and it was inside the kitchen. He held my hand and pulled me then put me on the bed and closed my mouth using his hand and he did bad manners. My inner clothes were removed and he removed his trouser up to below the knees and the door was open. When he did bad manners he had laid me on the bed and I was facing up and he slept on me. I felt pain in my urinating part and he used his urinating part into mine and I was crying and another man staying at his plot also came to accused’s kitchen and found him wearing his trouser and I was leaving the kitchen. I do not know the man’s name, he left and called another mother and woman and we went to the police. The man did not ask Migwi anything, when I left I took my pant. I did not bleed from my private parts. That woman looked at my private parts at the kitchen of the man who had come.*

*We then went to the police with the two men and woman we found officers and I told them what had happened and they wrote down. We entered into the police vehicle and taken to Eldama Ravine Hospital where I saw the doctor and my mother was asked if I had eaten, she said no and the doctor said I will not be treated until I eat.*

*My mother came and found us at the police station. I went to eat and returned, the doctor did not look at my private parts and saw him record down and I was admitted, but I returned home with my mother. I never went to any police later. Accused had never defiled me before. I had disagreed with him because he slept with me and I had never seen him quarrel with mother before but they disagreed after he defiled me.”*

#### **Cross-examination**

*“We had lived in your plot, I do not know the exact time. The cup was yours and I washed it first. When I left your kitchen I met the man who found you wearing your trouser and he asked what I was doing there and I told him you had defiled me and the man peeped into your house. I had not come to ask you for fire. You came to police alone and I had been taken by two men and a woman and my mother came later. You opened my dress up to my waist and my pant you removed up to the knees. You did not use hands but your penis.”*

##### **2. PW2 E N**

*“I come from Makutano, I am a peasant farmer. PW1 is my daughter aged 10 years born November, 2005 and a student at [particulars withheld] primary in class four. On 10/11/2013 at 5.00pm I had left home and was at Makutano centre after leaving home at around 4.30pm. I left my children PW1 and J my eldest so 12 years and W 5 years. I was peeling a mango at a stand when saw my son coming and said why was I eating and PW1 was at the police and that she had been raped by accused and I rushed at AP and on arriving I was told they had gone to Police Station Makutano and I went there and found accused, PW1, Abednego and one Shiringi who were witnesses and Joyce who had taken PW1 to hospital. We used to live together in the one plot. Statements was recorded and the witnesses Joyce and Abednego were all telling me that accused called the child into his house and they said she*

had stayed there for a long time and Shiringi went and peeped and found accused putting on his trouser and I asked the child if that happened and she said accused had asked for the cup which she did and accused told her he sends her to the shop and held her hand and returned her to the house and put her on the bed and slept on her and defiled her. I took the child for OB and went to check on her private part and saw sperms around her thighs and were whitish. A vehicle then took us to Eldama Ravine together with an officer, a lady, the child and accused herein. She was examined and the doctor did not tell me of results and accused was also examined.

PW1 was discharged and I was asked to return her the following day for injection. The doctor wrote some notes. We returned to the police and went home. The police took the P3 form to hospital and was duly filled. I have the child health card and shows Pw1's name and date of birth, 24/11/2005. At the time of the offence were living in one plot where accused was collecting the rent."

#### **Cross-examination**

"There were people who arrested but I was not present and I was told they took you. I checked the child alone on her private parts. They did not say doctor was drunk that day. I was not advised by anyone to apply eggs on the child. I saw sperms and I accompanied the child to hospital."

#### **3. PW3 No. 88309 PC Ndumia Nasere**

"I am the investigating officer herein. On 10/11/2013 at 4.00pm I was in the office when complainant while with two neighbours came to report the complainant had been defiled by the accused. I interrogated the complainant who had been brought by Harun Shiringi and Abednego Atuya and I recorded a report and we telephoned the mother so to know the age. The mother brought the child's clinic card showing she was born on 24/11/2005. We took the complainant and the mother to Eldama Ravine District Hospital in the evening we found the clinical officer who gave medicine and we returned with them to the station.

On 11/11/2013 CPI Shiligi took child for further examination and filling the P3 form. I charged the accused he was arrested same day as he followed complainant to the station after he realized she had gone there. I used to know the accused and see him at Makutano."

#### **Cross-examination**

"You were seen by a doctor who gave you medicine. The clinical officer did not say the child had not been defiled. I am not the one who escorted the child to hospital. You were not brought the following day to hospital. I did not claim that the doctor had been drunk."

#### **Re-examination**

"I did not escort him to hospital and I do not tell that the doctor was drunk and I never had any grudge with accused."

#### **4. PW4 Arafa Saleh**

"I work at Eldama Ravine District Hospital. In 2013 I was working at the same facility. I have a P3 form which I prepared and filled on 11/11/2013 for a minor aged nine years. I examined her, on examining her private parts there was penetration and her hymen was broken and it confirmed she had been defiled and I signed the same on 11/11/2013. The age of injuries was around 24 hours and her clothes were okay and her pants had sperm stains. They came with treatment chit from Eldama Ravine District Hospital and filed on 10/11/2015 the same confirmed the child had been defiled and tests were carried out and has same history and observation of hymen broken and urinalysis and HIV tests were negative. She was out on medication."

#### **Cross-examination**

"I examined the child on 11/11/2013 I did not examine you."

#### **Defence case**

#### **5. The accused Samuel Migwi gave an unsworn statement as DW1 and stated as follows:**

"I come from Makutano and I am not working. On 10/11/2013 I heard a child crying outside and I went to check some people who used to live there and I had reported them to chief that they were thieves. That day the young sister to complainant was crying and I was told they had gone to report I had defiled them and had gone to police and I followed them and we came up to Eldama Ravine and when I was examined by the doctor he found my penis does not function and in fact it was swollen and the officer who arrested me said the doctor who examined was drunk and did not know what he was doing and was to take back the child. The child said her pant was not removed and I wondered how that is possible if she does not remove her pant. The child evidence was due to how he was instructed and in fact the mother was saying they were forcing me I have not had sex since 1991 after I was involved in an accident and got injured. All the prosecution evidence is false and in fact I am 87 years old and I have never been charged with any offence."

### Statement of the judgment

6. In its judgment **delivered on the 31<sup>st</sup> May, 2016 by Hon. R. Yator SRM**, the trial court found that the prosecution had established its case and convicted the appellant as follows:

*“I have considered both the prosecution and defence evidence and exhibits herein produced.*

*It is not denied that at time of offence the child close to nine years as she was born in 24/11/2005 yet offences was on 10/11/2013 hence 14 days to exactly nine years.*

*On whether accused did defile the child, it is the child’s only evidence on how accused demanded for his cup and on returning it to him, pulled her to the main house where he defiled her.*

*The child was recalled for cross-examination and reiterated her earlier evidence. The mother in her evidence confirmed she had a cup which belonged to the accused.*

*The child mentioned that one Mustafa came and found accused while putting on his trousers and other witnesses who took her to the police were mentioned. Those witnesses were never traced so to come testify as it was indicated that they had relocated to unknown places and as such prosecution case was closed.*

*The doctor produced the P3 form and confirmed the child had been defiled as the hymen was broken and that she had just filled P3 form when injuries were 24 hours old.*

*The accused says he was framed of the charges and went to inquire why report was made where upon he was arrested. He insisted he had medical problems where he could not engage in sexual intercourse, however there was no evidence produced in court over his medication. I am thus convinced that his evidence was mere denials and as such the same is dismissed.*

*I hence find the prosecution evidence to be quite convincing and as such find that the prosecution has proved its case beyond the required standard proof.”*

### Issue for Determination

7. The issue before the court is whether the Prosecution has on the evidence before the court proved the charge of defilement against the appellant beyond reasonable doubt.

### Determination

#### *Insufficiency of Evidence for the prosecution*

8. Upon analysis of the evidence presented by the Prosecution and the unsworn statement by the defence, the Court has no hesitation in finding that the conviction of the appellant was unsafe as it was based on insufficient evidence.

9. In the circumstances of the case, the only evidence on the alleged defilement before the trial court was only from the complainant herself, as corroborated, if that were the case by the medical evidence of the PW4, the doctor who filled the medical examination Form P3 or if the trial court for reasons to be recorded believed the minor victim of a sexual offence pursuant to section 124 of the Evidence Act.

#### *Lack of corroboration by medical evidence*

10. The medical evidence did not corroborate the evidence of defilement by the PW1. Apart from its internal contradictions in the contents of the P3 form and the treatment notes it was purported to have been based. While the witness PW4 testified that she had examined the complainant and found her hymen “clearly broken with white discharge”, the treatment chit by the doctor who had seen the complainant on the day of the alleged defilement 10/11/2015 did not indicate a broken hymen and in fact had taken the case as one that could be investigated possibly of attempted defilement, the treatment chit showing “no bruises/laceration, hymen intact and whitish discharge”.

11. The following statement by Doctor Arafa, PW4, before the court is contradicted by the treatment notes it was purportedly based:

*“They came with treatment chit form Eldama Ravine District Hospital and filled on 10.11.2015 and the same confirmed child had been defiled and tests were carried out and has the same history and observation of hymen broken and urinalysis and HIV tests were negative....”*

The treatment chit and laboratory report, the latter showing no spermatozoa, red cells and no pus cells, clearly does not support the act of defilement.

#### *Section 124 of the Evidence Act.*

12. Although, as held by the Court of Appeal in **Andrew Apiyo Dunga and Another v. R** [2010] eKLR, followed in **David Masese Mogaka**

*v. Republic* [2013] eKLR, that lack of presence of spermatozoa inside a complainant is not fatal to proof of defilement or rape, but it is a factor to be considered in determining the credibility and reliability of the single witness evidence of the complainant; the same must be believable, and so recorded, in terms, of section 124 of the Evidence Act. Not so if there are grave inconsistencies in the evidence of the complainant *inter se* and as against the evidence of other prosecution witnesses.

*The improbability of the evidence of the complainant (PW1)*

13. The witness said that she “did not bleed from my private parts.” An eight-year old defiled by an 85 year old man would likely bleed in her private parts. Yet she said that she felt pain when he penetrated her. That she testified that she did not bleed may be indicative of attempted defilement theory in the treatment chart produced by PW4 as Ex. No. 2. The trial court in its *voire dire* examination of the child on two occasions when she testified before the court found that **“the minor does not possess enough intelligence** [the word ‘knowledge’ is used in her second appearance] **and understanding of oath taking hence to give unsworn evidence.”** This finding on the complainant should have put the court on caution to seek corroboration from other evidence adduced. If the complainant was not intelligent and did not understand the duty of telling the truth and the nature of the oath, there was a real likelihood that her evidence could have been influenced by the adults coaching her on what to say before the court. It was necessary, in these circumstances, to have the three adults who allegedly witnessed the incident testify.

*Crucial witnesses not called*

14. The complainant’s brother J who told the mother PW2 that the complainant had been raped by the appellant and that they were at the police station was not called as a witness to corroborate the complainant’s evidence.

15. The two men and woman, named as Mustafa, who according to PW1 found the accused wearing his trousers and Musanii who together with Mustafa and Joyce in the complainant’s first version of testimony took the girl to the police station did not testify as witnesses. PW2 the complainant’s mother gave the names of “*Abednego and one Shiringi who were witnesses and Joyce who had taken PW1 to hospital*”. It is not clear whether these were the same persons referred to by the complainant as they never testified. Joyce, particularly, who allegedly checked the girls private parts would have resolved the issue of any bruises, bleeding and presence of spermatozoa. The Prosecution had to close its case after the said witnesses failed to attend court despite warrants of arrest issued by the trial court against them.

16. There was also conflict in the PW1’s testimony and that of the mother PW2 as to how Mustafa (or Shiringi to PW2) had discovered the alleged defilement, which could have been resolved had the said witnesses testified. According to the complainant, PW1 -

In her first testimony-

**“Mustafa then came and then accused saw him he left my mouth and stood up and hid behind the curtain and I rose up from his bed and Mustafa came I left and we went with him to the police then accused was arrested. The accused had not removed my pant entirely but up to the knees and I put it back on when Mustafa arrived.”**

In the second version of her testimony-

**“Migwi was in the kitchen alone. And he lied that I go he sends me and it was inside the kitchen. He held my hand and pulled me then put me on the bed and closed my mouth using his hand and he did bad manners. My inner clothes were removed and he removed his trouser up to below the knees and **the door was open. When he did bad manners he had laid me on the bed and I was facing up and he slept on me. I felt pain in my urinating part and he used his urinating part into mine and I was crying and another man staying at his plot also came to accused’s kitchen and found him wearing his trouser and I was leaving the kitchen. I do not know the man’s name, he left and called another mother and woman and we went to the police. The man did not ask Migwi anything, when I left I took my pant. I did not bleed from my private parts. That woman looked at my private parts at the kitchen of the man who had come.”****

17. PW2, however, said she had been told as follows:

**“I rushed at AP and on arriving I was told they had gone to Police Station Makutano and I went there and found accused, PW1, Abednego and one Shiringi who were witnesses and Joyce who had taken PW1 to hospital. We used to live together in the one plot. Statements was recorded and **the witnesses Joyce and Abednego were all telling me that accused called the child into his house and they said she had stayed there for a long time and Shiringi went and peeped and found accused putting on his trouser....”****

18. It would have been unnecessary for Shiringi to peep if, according to the complainant, the door to the kitchen was left wide open.

19. Both the complainant and the mother told the court what others should have testified to – the finding of the appellant with his pants down. It would appear that the trial court improperly relied on this hearsay evidence, which was inconsistently rendered by the complainant and her mother as shown above, when it held –

**“On whether accused did defile the child, it is the child’s only evidence on how accused demanded for his cup and on returning it to him, pulled her to the main house where he defiled her.**

*The child was recalled for cross-examination and reiterated her earlier evidence. The mother in her evidence confirmed she had a cup which belonged to the accused.*

**The child mentioned that one Mustafa came and found accused while putting on his trousers and other witnesses who took her to the police were mentioned. Those witnesses were never traced so to come testify as it was indicated that they had relocated to unknown places and as such prosecution case was closed.**

The doctor produced the P3 form and confirmed the child had been defiled as the hymen was broken and that she had just filled P3 form when injuries were 24 hours old.

The accused says he was framed of the charges and went to inquire why report was made where upon he was arrested. He insisted he had medical problems where he could not engage in sexual intercourse, however there was no evidence produced in court over his medication. I am thus convinced that his evidence was mere denials and as such the same is dismissed.

I hence find the prosecution evidence to be quite convincing and as such find that the prosecution has proved its case beyond the required standard proof.”

*Benefit of doubt*

20. It is not clear which between treatment chit from Eldama Ravine Hospital recording the examination of the complainant on the date of alleged defilement 10/11/2013 and which finds no evidence of broken hymen and spermatozoa and the finding by Dr. Arafa of the same hospital on examination of the complainant the following day 11/11/2013, is valid medical position of the complainant on the material date. In addition, the gaps in evidence in want of testimony particularly of the complainant’s brother and the two men and women who dealt with the complainant upon finding the appellant defiling her and the probability of defilement with no bruises and lacerations and blood produced on her private parts in the circumstances of this case raised reasonable doubts as to the act of defilement alleged against the appellant. The doubt must be given to the benefit of the appellant.

*No finding under section 124 of the Evidence Act*

21. I have not found in the recorded evidence, especially with the improbability observed above, any basis to find that the child was telling the truth. The evidence of the complainant before and after she was recalled for cross-examination by the accused on 18/12/2014 was materially different. On 22/1/2014, PW1 testified significantly in material part as follows:

*“Wa Migwi asked me for his cup he had given mother porridge with. I then took the cup to him at his kitchen and I went alone. Migwi was in the kitchen alone, he lied that I go he sends me and it was inside the kitchen where I had entered. He held my hands and pulled me then put me on the bed and closed my mouth using his hand and he did bad manners. **My inner clothes were removed and it was my pant which accused removed his trouser up to below the knees and the door was open.**”*

*When he did bad manners he had laid me on the bed and I was facing up. He slept on me and i felt pain from my urinating part and I did not cry as he was covering my mouth and he was not telling me anything. **Mustafa then came and then accused saw him he left my mouth and stood up and hid behind the curtain and I rose up from his bed and Mustafa came I left and we went with him to the police then accused was arrested. The accused had not removed my pant entirely but up to the knees and I put it back on when Mustafa arrived. Mustafa did not talk to the accused and outside we met Joyce a big girl then we went to Police with Joyce and Musanii at Makutano Police Station where we made report.**”*

22. In the first version of her testimony, unlike in the second, she could name the two men, Mustafa who allegedly found the accused with his pants down, and Musanii, and the woman named Joyce, with the three of whom she went to report the matter at the police station. In the first testimony, the appellant only removed her pant upto the knees and she put it back on when Mustafa arrived but in the second version, the pant had been removed and she picked it up when they went to the police station. While memory lapse may explain the failure to recall the names of the persons who allegedly witnessed the incident, difference in details about her pant are inexplicable.

23. The trial did not make a finding as to the truth of the complainant. The principle of first appellate review under **Okeno v. R** (1972) EA 32 requires the appellate court to defer to the trial court which saw and heard the witnesses, and the finding necessary under the proviso section 124 of Evidence Act which would entitle the court to convict without corroboration in sexual offence cases should have been made by the trial court. The trial court only said **“I hence find the prosecution evidence to be quite convincing”**.

*Reverse burden of proof*

24. It is also clear from the judgment that the magistrate convicted the appellant because she did not believe his story, not because she believed the girl was telling the truth as required by section 124 of the Evidence Act. The trial Court found that –

*“The accused says he was framed of the charges and went to inquire why report was made where upon he was arrested. **He insisted he had medical problems where he could not engage in sexual intercourse, however there was no evidence produced in court over his medication.** I am thus convinced that his evidence was mere denials and as such the same is dismissed.”*

The appellant was convicted because he did not offer evidence of medication to prove that **“he had medical problems where he could not engage in sexual intercourse”**. This holding placed a reverse burden on the appellant to prove his innocence, contrary to the cardinal principle of criminal justice that the burden of proof remains with the prosecution throughout the trial.

25. The appellant who is now 90 years old has already been in custody for five years 9 months since he was arrested on 10<sup>th</sup> November 2013 while his conviction was not safe.

**Orders**

26. Accordingly, for the reasons set out above, I quash the conviction for defilement contrary to section 8 (1) as read with (2) of the Sexual Offences Act and set aside the sentence of imprisonment for life passed on the appellant.

27. There shall, consequently, be an order that the appellant be released from custody forthwith, unless he is otherwise lawfully held.

**DATED AND DELIVERED ON THE 18<sup>TH</sup> DAY OF JULY 2018.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

*Appellant in person.*

*Ms. Kitilit, Prosecution Counsel for the DPP.*