



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CORAM: MAJANJA J.

CRIMINAL APPEAL NO. 69 OF 2014

HILARY KIMUTAI RONO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal from the original conviction and sentence of Hon. B.O Ochieng' – SPM (Ag.)

dated 3rd October 2013 at the Principal Magistrate's Court at Kilgoris

in Criminal Case No. 828 of 2013)

JUDGMENT

1. The appellant, HILARY KIMUTAI RONO, was charged with the offence of defilement contrary to section 8(1) and (3) of the Sexual Offences Act. The particulars of the charge were that on diverse dates in the months of February and September 2013 at [particulars withheld] Village, Emmurua Dikirr Location, Transmara East District of Narok County, the appellant did cause his penis to penetrate the vagina of GCL, a girl aged 14 years.

2. The appellant pleaded guilty and was duly convicted on the principal charge of defilement. He was sentenced to 20 years imprisonment. He now appeals against conviction and sentence on the grounds set out in his Memorandum of Appeal filed on 14th October 2014 and the written submissions. He contends that the plea was equivocal, that he was not afforded time to prepare his defence as he was not furnished with statements or exhibits and that the conviction and sentence were a miscarriage of justice.

3. I have read the record to confirm whether the plea of guilty was unequivocal. When the accused was arraigned in court, the charges were read out to him in Kipsigis and the first time he stated;

“It is not true. We were together though we were friends ... please read out the charge sheet again.”

The court obliged to his request and in respect of the first count he stated;

“It is true. We were having a relationship.”

On the second count, he stated that;

“It is true we had sex. We were lovers. We had a relationship”.

4. The prosecution read out the facts which were to the effect that the appellant, who had a hotel in [particulars withheld] Village, met the complainant then aged 14 years and a student in Form 1 at a local school. They had a sexual relationship and in September 2013, the appellant promised to marry her. He took her to a relative in September 2018. The complainant's parents were informed by the school that she had disappeared so they reported the matter to the police. The accused was found with the child who was by then seven months pregnant. The prosecution produced the P3 form which confirmed the pregnancy and the birth certificate which showed that the child was born on 23rd July 1998. The appellant accepted these facts as true and was duly convicted.

5. When called upon to mitigate, the appellant stated that;

“I had decided to marry the girl. She got pregnant and I thought she would go back to school after she delivers. I pray that I be allowed to get money to pay for her fees until she finishes school. I will also take care of the baby.”

6. The appellant was convicted and sentenced to the minimum sentence provided under section 8(3) of the Act.

7. I find and hold the appellant readily admitted the fact that he had sexual intercourse with a child who is in law incapable of giving consent. Both in plea and mitigation nothing emerged that would suggest that the plea was not unequivocal. I also hold that failure to give the accused witness statements and exhibits was not a violation of the accused’s rights and he pleaded guilty and by so doing waived his right to a trial.

8. The conviction and sentence are affirmed. The appeal is dismissed.

Dated and delivered at Kisii this 5th day of October, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Appellant in person.