



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO: 14 OF 2016**

**[From Original Conviction and Sentence in Criminal Case No: 30 of 2015 of the Chief Magistrate's Court at Thika]**

**GEOFFREY KARANJA MWAURA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. This is the judgement of the **Criminal Appeal No. 14 of 2016**. The appellant is **GEOFFREY KARANJA MWAURA**. The appellant - then the accused in the lower court was charged for the offence of Defilement of a girl contrary to **Section 8 (1) (4)** of sexual offences act No: **3 of 2006**.

The particulars thereof were that on the **31<sup>st</sup> day of December, 2014** at **[particulars withheld]** village in **Muranga County** within the Republic of Kenya by use of his genital organ namely; penis, committed an act which caused penetration to the genital organ namely vagina of **R M**, a girl aged **16** years.

**Alternative charge:** he committed an indecent act with a girl contrary to **Section 11 (1)** of Sexual Offences Act No. **3 of 2006**

Particulars thereof are on **31<sup>st</sup> day of December, 2014** at **[particulars withheld]** village in **Muranga County** within the Republic of Kenya, intentionally touched the vagina of **R M** girl aged **16** years.

2. He pleaded not guilty to the charge on **5<sup>th</sup> January, 2015**. The trial proceeded at Thika Magistrate's court. The prosecution marshalled five (5) witnesses who testified. The accused was duly put on his defence, he made unsworn evidence. The trial magistrate found the accused guilty and convicted him of the said offence. He was accordingly, sentenced to serve **15** years imprisonment.

**3. The Appeal**

The accused being aggrieved and dissatisfied filed an appeal against both the conviction and the sentence. He is unrepresented.

His grounds of appeal can be summarized into two (2) **grounds**. They are:

- 1. THAT** the evidence was contradictory.
- 2. THAT** the trial court failed to take into account my mitigation and my defence.

**4. SUBMISSIONS**

The appellant in his written submissions, pleads for Mercy. He says he is a first offender. Both his parents died, he is currently the breadwinner of his siblings. That he is ready to reform.

The respondent, **Madam Muthei**, opposed the appeal.

- 1. On ground one of the appeal**, she says all the evidence was properly put, was well corroborated. The descriptions of the events were by the victim, corroborated by various witnesses, **PW2** is the first person the victim reported to, and she being the mother, was able to notice dirty cloths the victim was wearing. This was also seen by **PW3** and **PW5** and the investigating officer.

The doctor- **PW4** brought up the fact that the child was indeed defiled. The P3 form indicated the same.

2. **On ground two of the appeal**, I submit that on this offence, there is no much room to manoeuvre, the sentence is set and is immutable. The appellant got the minimum, it could have been enhanced to life.

3. **On ground three of the appeal**, on **Section 246** of the **Evidence Act**, even without corroboration, the minor victim is believable. This provision applied to this case. However, the doctor's evidence corroborated the minor's evidence.

4. **On grounds four of the appeal**, I submit that the appellant's defence was indeed considered. At page **6**, the trial magistrate says the appellant's defence was a mere denial, did not say anything in cross-examination to refute the evidence of the prosecution.

5. **On grounds five of the appeal**, I submit that the contents were in accordance with provision of **Section 169** of the Criminal Penal Code.

#### 5. **THE FIRST APPELATE COURT**

The first appellate court's duty is to read the lower court's proceedings, the testimonies of the witnesses re-evaluate them and come to its independent conclusion, knowing very well that you neither saw, nor heard their testimonies Viva Voce. See generally **Okeno Vs Republic [1972] E.A. page 32.**

#### 6. **QUESTIONS OF DETERMINATION**

1) Was there penetration of the appellant's penis into the victim's genitalia?

2) Was the appellant either recognized or identified as the person who committed the said offence?

#### 7. **The proceedings: Analysis**

On **31/12/2014 R M K**, a child aged **16** was in the field getting animal feeds for their animals when he was approached by the appellant **GEOFFREY KARANJA MWAURA**. He told her that she was his wife. Before too long he forcefully took her to the ditch, removed her clothes and raped her.

**R** said she couldn't scream as the appellant covered her mouth with the palm of his hands. The girl knew the appellant as he worked for the neighbours splitting wood. She had also seen him at the buying center from the shop of Wakamau. She knew him as **KARANJA**. This was a case of recognition.

**PW1**'s testimony was corroborated by **PW4** – the clinical officer, **CHARLES KAMAU KAMOTHO**. **PW4** confirmed that there were bruises. Hymen had been broken, these bruises were on external genitalia. There were also pus cells in her urine. **PW4** therefore confirmed forceful penetrated sex with **PW1**.

#### 8. **FINDINGS**

For those reasons, I find that there is no merit in this appeal. The court proceeds to uphold both the conviction and the sentence. Therefore, this appeal is hereby dismissed.

Right of appeal - **14** days.

**JUDGMENT WRITTEN AND SIGNED BY:**

**C. B. NAGILLAH**

**JUDGE**

**JUDGMENT DELIVERED, DATED AND COUNTERSIGNED AT KIAMBU BY:**

**THIS 15<sup>TH</sup> DAY OF MAY 2017**

**JOEL NGUGI**

**JUDGE**

**In the Presence of:**

.....the Appellant

.....for Respondent

.....for Court Assistant