



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL APPEAL NO. 206 OF 2014**

**TITUS KIPRUTO KIRUI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(An Appeal from the Judgment of the Senior Resident Magistrate Honourable M.W NJAGI in Eldoret  
Criminal Case No. 2968 of 2013, dated 18<sup>th</sup> December, 2014)*

**JUDGMENT**

1. The appellant *Titus Kipruto Kirui* was tried and convicted of the offence of defilement contrary to *Section 8(1) as read with Section 8(2) of the Sexual Offences Act No. 3 of 2006*.
2. The particulars of the offence alleged that on 9<sup>th</sup> July, 2013 at [particulars withheld]village in Keiyo South District of Elgeyo Marakwet County, the appellant caused his genital organ to penetrate the genital organ of *B J K* (Name Withheld) a child aged 5 years.
3. Upon his conviction, the appellant was sentenced to life imprisonment. He was aggrieved by his conviction and sentence hence this appeal.
4. The court record shows that on 26<sup>th</sup> January, 2017, the appellant sought and obtained leave to amend his grounds of appeal but on the hearing date, he changed his mind and informed the court that he wished to rely on his petition of appeal filed on 24<sup>th</sup> December, 2014.
5. In the said petition of appeal, the appellant raised three principal grounds of appeal. He complained that the learned trial magistrate erred in law and fact by failing to scrutinize in depth the contents of the P3 form; that the trial court erred by disregarding the contradictions in the evidence adduced by the arresting officer and the investigating officer and thirdly, that the trial court failed to consider his defence.
6. At the hearing, the appellant appeared in person. He mainly relied on home made written submissions which he presented to the court. He in addition contended that the charge was a fabrication by the complainant's father who was allegedly unhappy with him after he demanded payment of his Kshs. 10,000. He urged the court to allow the appeal.
7. The appeal is contested by the state. Learned prosecuting counsel *Ms Oduor* in opposing the appeal submitted that the appellant was properly convicted as all elements of the offence had been proved against him beyond any reasonable doubt; that the defence was a mere denial as the appellant had been caught in the act. She implored the court to dismiss the appeal for lack of merit.

8. This is a first appeal to the High Court. I am reminded of the duty of the first appellate court which is to re-examine and re-evaluate all the evidence tendered before the lower court to reach its own independent conclusions. In so doing, I should be careful to remember that unlike the trial court, I did not have the advantage of seeing or hearing the witnesses and given due allowance for that disadvantage. See; *Okeno V Republic 1972 EA 32*; *Njoroge V Republic (1987) KLR 99*; *Kinyanjui V Republic (2004) 2 KLR 364*.

9. I have carefully considered the submissions made by the appellant and the state. I have also thoroughly scrutinized the evidence on record alongside the grounds of appeal and the judgment of the learned trial magistrate.

10. I wish to start by briefly addressing the appellant's complaint that his defence was not duly considered by the trial court. My reading of the judgment by the learned trial magistrate shows very clearly that she analysed the appellant's defence and weighed it against the evidence tendered by the prosecution particularly the medical evidence in the P3 form. Having done so, she concluded that the appellant's defence was not worthy of belief. In the circumstances, I do not find any merit in that ground of appeal.

11. The appellant also contended that the learned trial magistrate erred in not properly considering the contents of the P3 form produced as Pexhibit 2. But the learned trial magistrate's judgment reveals the complete opposite. It shows that the trial court evaluated the content of the P3 form and found that the injuries described therein constituted sufficient evidence to prove that the complainant (PW2) had been defiled as claimed in her testimony. She found that the findings enumerated in the P3 form proved penetration. I have no reason to fault the trial magistrate on that finding.

12. PW2 in her evidence was emphatic that it is the appellant who had sexually assaulted her on the afternoon of 9<sup>th</sup> July, 2013. The appellant was very well known to her as they lived in the same compound. He was their domestic worker. The appellant confirmed this in his defence. Besides, he was caught in the act by PW1, the complainant's father.

There is therefore no doubt that it is the appellant who sexually assaulted the complainant as alleged.

13. Turning to the appellant's remaining grievance, there is no truth in his allegation that there were contradictions in the evidence of the arresting and investigating officer. The arresting officer testified as PW3. He only re-arrested the appellant from members of the public who included PW1 and the complainant. This was on 10<sup>th</sup> July, 2013 at Kamwosor AP camp. On the same date, he escorted the appellant to Kaptagat police station where he handed him over to the investigating officer (PW5). PW5 did not say anything in her evidence which contradicted the evidence of PW3. Infact, her evidence was consistent with the testimony of PW3 and PW2.

14. In view of the foregoing, and considering that the age of the complainant is not in dispute, I find no reason to fault the judgment of the learned trial magistrate. It is my finding that the trial court properly analysed the evidence placed before it and arrived at the correct conclusion that the charge of defilement had been proved against the appellant beyond any reasonable doubt. I am thus satisfied that the appellant was correctly convicted.

15. On sentence, the appellant was sentenced to life imprisonment which is the only sentence prescribed by the law for the offence of defilement where the victim is eleven years of age and below. The sentence imposed on the appellant was therefore lawful and it is hereby upheld.

16. For the foregoing reasons, I am satisfied that the appeal is devoid of merit. It is accordingly dismissed in its entirety.

It is so ordered.

**C.W GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 10<sup>th</sup> day of May, 2017**

In the presence of:

Appellant

Miss Kigegi for the state

Mr. Lobolia court clerk