



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL APPEAL NO. 34 OF 2014**

**EMMANUEL KIPSANG LANGAT.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the Conviction and Sentence in Criminal Case No.29 of 2013 Kericho CM's Court  
Hon. Soita- CM)*

**JUDGMENT**

The Appellant was convicted and sentenced to life imprisonment for the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act No.3 of 2006.

The particulars are that on the 5th day of June, 2013 at Kapkatet Market in Kericho County intentionally and unlawfully caused his penis to penetrate the vagina of I I O a child aged eight (8) years.

The main grounds for this appeal are that;

1. The trial Magistrate did not appreciate the existence of a grudge between the mother of the Complainant, the Complainant herself and the Accused.
2. That the Conviction was against the weight of the evidence adduced.
3. The trial Magistrate did not consider the defence put forth by the accused while arriving at his judgment.

This is a first appeal. Its the duty of this court to re-evaluate and consider the evidence on record so as to arrive at its own conclusions, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses testify. Okeno V. R. 1972 EALR.

**Brief Facts**

The prosecution case is that the Complainant a girl aged eight (8) years was on her way to the local shops to buy paraffin when she was confronted by the accused who was a neighbour. He forcefully took her to his house, threw her onto his bed took off her clothes and his and proceeded to have sexual intercourse with her. Afterwards he threatened her and warned her against disclosing to anyone of what had taken place. She later went home and took a bath but her mother noticed that she was bleeding from her private parts and decided to take her to hospital for treatment and the matter was reported to police.

The Complainant's mother B A (PW2) had left her children at home when she proceeded to her place of

work returning in the evening. She did not find the Complainant in the house. She searched for her in the neighbourhood but she later showed up herself. After her daughter took a bath she noticed that blood was oozing from her private parts, upon interrogation she refused to mention who had sexually assaulted her. She was taken to hospital for treatment and later the matter was reported to police. Later in a delirium during her sleep she started calling Malel asking him to release her. After she woke up and was interrogated she mentioned the Accused as the one who had defiled her, he was known in the neighbourhood as the person who was piercing the ears of young girls.

The Complainant was admitted in hospital for eight (8) days, meanwhile the Accused went into hiding and was later arrested at Litein.

PW2 is the Clinical Officer who examined the Complainant. Upon examination he found that she had a vaginal tear extending to anal sphincter, the cervix was torn, she had suffered multiple lacerations of the vaginal wall.

In his defence the Accused testified to have been beaten by men who were alleging that he was a thief, later it was alleged that he had defiled the Complainant. He knew the mother of the Complainant as he used to pay his house rent to her. That the Complainant's mother harassed and chased away his wife alleging that he had wasted her time and had refused to marry her.

The main ground in this appeal is that the whole case was a frame up as the Complainant's mother bore a grudge against him.

It is the contention by the Appellant that the learned trial Magistrate did not appreciate the existence of a grudge between the Appellant and the mother of the Complainant.

I have perused the judgment in this case and I have noted that the learned trial Magistrate did frame up issues for consideration that were four (4) in number as hereunder;

1. Was I defiled?
2. If so, who was the defiler?
3. Was the accused case framed up because of a love affair gone sour?
4. Was the case proved beyond reasonable doubt?

The learned trial Magistrate did make a finding that there was no evidence of a frame up. That the Complainant was defiled is not in dispute. As a result of the defilement she was admitted in hospital so as to be transfused with blood, and to be operated so as to repair the vaginal tears and the anal sphincter. This admission was for one (1) week.

#### Age Assessment

A Birth Certificate no. [Particulars withheld] was produced to court as exhibit no.9 it showed the date of birth as 25th May, 2005. An age assessment report was also produced in court as P.exhibit 9 it showed the age of the Complainant to be eight (8) years. I am satisfied that proper age assessment was done.

#### Identification

The Complainant's house and that of the Appellant was in close proximity. The Accused was known in the neighbourhood for piercing young girls ears. There is evidence from the Complainant's mother that she had paid the Appellant Kshs.80/= for the services of piercing the ears of the Complainant and her sister.

The Complainant did testify to have been defiled by the accused who was known to her. She had first refused to divulge the name of the person who had defiled her but she later mentioned this to her mother. The Appellant had threatened to cut her with a knife. When interrogated by PW4 she also mentioned the Accused as the person who had defiled her.

The Appellant was arrested on the 7th day of June, 2013 at Litein and beaten by members of public before he was handed over to police. The allegation was that he had gone into hiding after the incident.

Upon evaluation of the evidence on record, I am satisfied that the learned trial Magistrate did consider all the ingredients of the offence of defilement including the allegations of the existence of a grudge and the defence put forth by the Appellant.

The conviction was safe and the sentence lawful. The Appeal has no merit and is disallowed. Conviction and Sentence upheld.

**DELIVERED, SIGNED AND DATED THIS 9TH DAY OF NOVEMBER, 2016.**

**M. MUYA**

**JUDGE**

In the presence of:

1. M/s Mwangi for the State
2. Learned Counsel for the Defendant- N/A
3. Emmanuel - court assistant