



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CRIMINAL APPEAL CASE NO. 25 OF 2013**

*[Being an appeal from the judgment of M.A. Nanzushi [RM] delivered on 1<sup>st</sup> of march, 2013 in  
Kimilili SRMC no. 177 of 2012]*

FRED WANJALA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

**BACKGROUND**

1. The appellant was charged with the offence of defilement contrary to Section 8 (1) as read with 8 (2) of the Sexual Offences Act in SRMCC No. 177 of 2012. Kimilili SRM Court. He was found guilty of the offence, convicted and sentenced to life imprisonment.
2. The particulars of the case were that on the 3<sup>rd</sup> day of August, 2012 in Bungoma North District within Bungoma County the appellant caused his penis to penetrate the vagina of **V W** a child of 8 years.
3. Being aggrieved by the judgment the appellant appealed to this court on the following grounds;
  - i. The trial magistrate failed to consider the gravity of the contradiction in the prosecution evidence as the same should have been resolved in his favour.*
  - ii. The trial court referred to extraneous matters in arriving at the judgment.*
  - iii. The trial court erred in laying emphasis on the prosecution case.*
  - iv The trial court relied more on the circumstantial evidence as opposed to the direct evidence which was in favour of the appellant.*
  - v. Sentence was harsh and excessive.*

**RESPONDENT'S SUBMISSIONS**

4. In his oral submissions the appellant stated that he challenges the identification parade as the same was not proper. Secondly, no investigations were conducted, thirdly he was not furnished with statements, fourthly **PW1** did not call witnesses and lastly he was not examined.

## **Respondents submissions**

5. The State objected to the appeal on grounds that the offence attracts life imprisonment, all ingredients of defilement were proved, the victim was 8 years, identification was by the victim and there was a medical report which proved penetration. The state argued for the conviction and sentence to be upheld.

6. This is the first appellate court and it has the duty to consider the evidence on record afresh, analyze and evaluate the same in order to arrive at an independent decision **See Okeno Vs. Republic [1973] E.A. 322**

7. The prosecution case is that the appellant who was a neighbor of the victim aged 8 years accosted her on two occasions and defiled her causing the child injuries. The child reported to her grandmother after the 2<sup>nd</sup> incident causing the appellant to be arrested. The prosecution called a total of 5 witnesses whose evidence was as follows;

**PW1 V W-** aged 8 years testified that on 3<sup>rd</sup> of August, 2012 as she came from school, the appellant led her to a maize plantation and put his penis in her vagina and told her not to tell anyone. He promised to buy her a mandazi. She knew the appellant well as he was a neighbour. She further testified that this happened again at 1.00 p.m on the 8<sup>th</sup> of August as she went home from school. This time he promised to buy her maize. She went home and found her grandmother who noticed that she could not walk properly and on being asked she narrated to her grandmother the incident and her grandmother took her to hospital the following day the 8<sup>th</sup> of August 2012.

**PW2 Esther N W** aged 50, grandmother to **PW1**. She recalled that on 8.8.12 at about 7.00 p.m she noticed her grand child walking legs apart. She enquired and the child told her that she was sick in her private parts. She checked and saw a torn vagina and the girl bleeding. She learnt from the girl that the appellant had defiled her and told her not to tell anyone. The next day she took her to hospital, and reported the matter to the police.

**PW3 Ignatius Okumu** – a clinical officer at Naitiri sub-district hospital, he examined and treated **PW1** aged 8 years on 9.8.12, **PW1** was said to have been defiled on 2<sup>nd</sup> and 8<sup>th</sup> august, 2012. The girl walked in pain, had a bloody vagina, was bruised and the hymen torn, had colorless discharge. He formed the opinion that she had been brutally defiled.

**PW5 the Investigating Officer.** In his evidence a part from narrating the evidence of **PW1 & 2** stated that **PW1** was able to identify her defiler well as she knew him.

8. In his defence the appellant denied committing the offence. He said That he did not know the reason for his arrest.

9. The issues before court are;0

i. Whether the victim was a minor.

ii. Whether she was defiled

iii. Whether the prosecution have proved beyond reasonable doubt that the appellant was culpable

10. From the evidence of **PW1,2 & 3** the victim was a girl aged 8 years which is not in dispute and I therefore find that as a matter of fact the girl was 8 years old at the time of the alleged offence,

11. From the evidence again of **PW1,PW2 & PW3** the victim **PW1** was defiled on the 2<sup>nd</sup> and 8<sup>th</sup> August, 2012. A blood stained pant was produced in court and upon examining **PW1** on the 9<sup>th</sup> of August, 2016 **PW3** a clinical officer found blood stains in **PW1's** vagina, bruises and a missing hymen.

He was of the view that she had been brutally defiled. With this evidence I find as a matter of fact that **PW1** was indeed defiled.

**12. PW1** informed her grandmother, the hospital, the police and the court that she knew her defiler well. She pin pointed the appellant and was able to tell the dates when she was well defiled. She strikes me to be a sharp consistent and truthful witness whose evidence ought not to be doubted. Secondly the court under provision to Section 124 of the Evidence Act can rely solely on the evidence of a victim of sexual assault in arriving at a conviction.

I believe **PW1** in her evidence. I also find that her evidence was corroborated by **PW2 & 3**.

**13.** In considering the grounds of appeal I do not find any inconsistency in the prosecution evidence, neither any extraneous matters that the trial court considered in arising at a conviction.

**14.** I am of the view that the prosecution proved its case beyond any shadow of doubt.

**15.** I also do find the conviction was safe and the sentence lawful. I find no reason therefore to interfere with the sentence.

Appeal stands dismissed.

**DATED and DELIVERED at BUNGOMA this 10th November, 2016**

**ALI-ARONI**

**JUDGE.**