

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 24 OF 2014

KEVIN RICHARD OKOLA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[From original conviction and sentence in the Principal Magistrate's Court at Bondo Criminal Case No. 582 of 2013]

J U D G M E N T

1). The appellant was charged with the offence of Defilement contrary to section 8 (1) (3) of the Sexual Offences Act No. 3 of 2006.

The particulars were that on the diverse dates between 1st January 2013 and 31st January 2013 at [particulars withheld] Sub location in Rarieda District within Siaya County intentionally caused his penis to penetrate the vagina of F A O a child aged 15 years.

2). The appellant was equally charged with alternative charge of committing an Indecent Act with a child contrary to section 11 (1) of the Sexual Offences Act No. 3 of 2006.

The particulars were that on the diverse dates between 1st January 2013 and 31st January at [particulars withheld] Sub location in Rarieda District within Siaya County intentionally touched the vagina of F A O a child aged 15 years.

3). The appellant was convicted and sentenced to 20 years imprisonment hence this appeal.

4). I have perused the record of appeal as well as heard the parties submissions herein. What is not essentially in dispute is the fact that the complainant and the appellant were known to each other. The age of the complainant was never disputed. Further there was no argument concerning the pregnancy of the complainant. The only issue is whether the appellant was responsible for the said pregnancy.

5). I have anxiously weighed this issue and came to the conclusion that there is need to determine the paternity of the child born before making further orders in respect to this appeal. This decision is informed by the evidence on record which clearly shows that there was no direct evidence to suggest that the appellant defiled the minor except the evidence from her.

6). Consequently, and for purposes of meting justice to both I do order that a DNA test be conducted by a relevant certified institution upon the child and a report be availed to the court within the next 60 days from the date of the delivery of this judgment. This court shall thereafter give further orders.

Dated, signed and delivered at Kisumu this 2nd day of March, 2015.

H.K. CHEMITEI

JUDGE