

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 113 OF 2014

SAMSON KIGOTHO NJUGUNA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from conviction and sentence in Murang'a PM Criminal Case No 2 of 2013 – E M Kagoni, Ag SRM)

R U L I N G

1. The Appellant in this appeal, **Samson Kigotho Njuguna**, was convicted after trial of **defilement contrary to section 8(1) & (3) of the Sexual Offences Act, No 3 of 2006**. It was alleged that between 16th and 19th December 2012 in Murang'a County, he intentionally caused his penis to penetrate the vagina of one FNM, a child aged 14 years. He was sentenced to serve 20 years imprisonment. He has appealed against both conviction and sentence. The appeal is yet to be heard as the original lower court record has not yet been forwarded to this court.
2. The Appellant has applied by **notice of motion dated 18th August 2014** to be admitted to bail under **section 357 of the Criminal Procedure Code** pending disposal of his appeal. Learned Prosecution Counsel for the Respondent does not oppose the application.
3. I have read the testimonies of the six witnesses who testified for the prosecution and the testimony under oath of the Appellant and that of his witness. I have also read the judgment of the trial court.
4. The convicting magistrate took over trial of the Appellant after closure of the prosecution case. After closure of the defence the court visited the scene of the alleged offence – the Appellant's home. The visit was without the application of either the prosecution or the accused. The visit took place over two years after commission of the alleged offence.
5. The Appellant was convicted upon the testimony of the complainant as there was no medical evidence of penetration. The trial court however found the complainant not to be a truthful person who was given to telling lies, yet it chose to believe that part of her testimony to the effect that the Appellant had had intercourse with her in his house for three nights. It appears to have escaped the trial court that its own finding that the complainant was "**not a straightforward girl and at times economical with the truth**" tainted her entire testimony.
6. Learned Prosecution Counsel in his turn pointed out that there were major contradictions in the prosecution case, particularly as between the testimonies of the complainant (PW1) and her mother (PW2); and that the trial court misapprehended the Appellant's defence and erroneously held it to have been made under **section 8(5) (a)** of the Act, whereas his defence in fact was a total denial.
7. I am persuaded that this is a suitable case to admit the Appellant to bail pending disposal of his appeal. He shall be released upon his own cognizance in the sum of KShs 50,000/00 and one surety in like sum. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 6TH DAY MAY OF 2015

H.P.G.WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 8TH DAY OF MAY 2015