



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 114 OF 2010

ERIC M. RUGENDO.....APPELLANT

versus

REPUBLICRESPONDENT

*(Arising from the judgment of Hon. L. Mbugua Principal
Magistrate, Karatina in Criminal Case No. 900 of 2009)*

JUDGMENT

1. The appellant ERIC M. RUGENDO was charged with the offence of attempted defilement contrary to section 9(1) of the the sexual offences Act No. 3 of 2006 the particulars of which were that on the 2nd day of November 2009 at Ruthagati village of Nyeri District within Central Province did attempt to cause the penetration of his penis to the vagina of A.W.W. a child aged 9 years.
2. He faced an alternative charge of indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006 the particulars of which were that on the 2nd day of November at Ruthagati village of Nyeri North District within Central Province did intentionally and unlawfully cause his hands to come in contact with the vagina of A.W.W. a girl aged 9 years.
3. He pleaded not guilty, was tried and convicted and sentenced on the main count of attempted defilement and sentenced to 20 years imprisonment.
4. Being dissatisfied by the said conviction and sentence the appellant filed this appeal and in his home grown grounds of appeal raised the following grounds:
 - a) *His rights under then section 72(3)b of the constitution were violated in that he was not taken to court within the stipulated period of time.*
 - b) *He was convicted on the strength of uncorroborated evidence of a minor*
 - c) *The prosecution case was not proved on the required standard.*
 - d) *His defence was disregarded without any proper reason.*

SUBMISSION

5. When the appeal herein came up for hearing before me the appellant who was unrepresented filed amended grounds of appeal and written submissions which he relied upon while Mr. Cheboi appeared for the state.

6. It was submitted by the appellant that the trial was conducted in Kikuyu language whereas the appellant came from Meru and therefore the same was prejudiced. It was further submitted that the age of the complainant was never proved and that his defence was never considered. It was submitted that the prosecution case was full of contradictions and was therefore not proved beyond reasonable doubts.

7. Mr. Cheboi for the state submitted that the appellant participated fully in the trial and was able to cross examine the prosecution witnesses and was able to put up a defence. He further submitted that the trial court found no basis of his defence and that there was no need to conduct medical examination on the appellant. It was submitted that there is no requirement of corroboration in sexual offences.

8. This being a first appeal the court is required to reevaluate the evidence tendered before the trial court and to come to its own conclusion though taking into account the fact that it did not have the advantage of seeing and hearing witnesses.

9. It was the prosecution's case that P.W.1 A.W.W. then aged 9 years went to her grand mother's place to pick her homework book and found the appellant who was a farm herd there. He told her that they should go to the office plantation which she declined. He thereafter offered to walk her to the matatu stage when he tripped her causing her to fall down. He put his hand on her mouth and started removing her pant to have sex with her.

10. P.W.1 thereafter bit the appellant finger causing him to remove his grip on her. She got an opportunity to flea and reported to her mother P.W.2 who confirmed that the complainant reported to her with red eyes and scratch marks on her neck.

11. P.W.4 Maina Ndirangu who examined the complainant confirmed that her sweater was dirty and covered in soil. She had spermatozoa and pus cells, gram cocca and gonorrhoea germs. There were bruises on the left side of her face and scratch marks on the right side of the neck.

12. When put on his defence the appellant stated that the family implicated him because they had his money.

13. From the proceedings and submission herein it is clear that this being a sexual offence there was no need for corroboration of the evidence of P.W.1 further being a charge of attempted defilement there was no need to examine the appellant to confirm whether he had the same sexually transmitted disease as the complainant. That would have only been relevant had he been charged with the offence of defilement.

14. I therefore find that the prosecution case against the appellant was proved beyond reasonable doubt and that his conviction was safe. I would therefore dismiss the appeal herein on both conviction and sentence.

Dated, signed and delivered at Nyeri this 6th day of June 2014.

J. WAKIAGA

JUDGE

Court: Judgment read in open court in the presence of the appellant and Mr. Njue for the state. The appellant has right of appeal to the court of appeal

J. WAKIAGA

JUDGE

6/6/2014