

SAMUEL WANYOIKE KIMANI.....APPELLANT

-versus-

REPUBLIC.....PROSECUTOR

(Judgment arising from the original conviction and sentence in Criminal Case No.1632 of 2006 in the Chief Magistrate's Court at Nyeri by R. Nyakundi – C.M.)

J U D G M E N T

Samuel Wanyoike Kimani, the Appellant herein, was tried on a charge of **Defilement of a Girl** contrary to **Section 145(1)** of the **Penal Code**. In the end, he was convicted and sentenced to Life Imprisonment. The Appellant was aggrieved hence this appeal.

On appeal, the Appellant put forward the following grounds:

- “1. That the Learned Trial Magistrate erred in both law and facts by holding that the Prosecution’s Case was prima facie whereas it was not and below the required legal standard.***
- 2. That the Learned Trial Magistrate erred in both law and facts in holding that the circumstantial evidence was credible whereas it was not as it fell short of secondhand information.***
- 3. That the Learned Trial Magistrate was not independent neither impartial as required by the law in accordance with the judicial stipulations.***
- 4. That the Learned Trial Magistrate erred in both law and facts in dismissing my advance and meriting defence.”***

Before considering the merits or otherwise of the appeal, let me set out in brief the case that was before the trial court. The Prosecution’s Case was supported by the evidence of four witnesses. It is the evidence of Mary Muthoni (P.W.1) that on 7th April 2006, at about 7.00 P.M., she met the complainant (LW) at the door-steps of the Appellant’s house. The complainant was putting on her trouser. P.W.1, claimed, she interrogated the complainant on what happened to her. It is said that the complainant told P.W.1 that she had been defiled by the Appellant after placing her on his bed before inserting his penis on her private parts. P.W.1 took the complainant to her house and thereafter to her mother before making a report to the police. It is the evidence of P.W.1 that the Appellant locked himself up in his house. W.W (P.W.2) told the trial court that she had left the complainant to play with other children outside her house as she attended to the house chores. P.W.2 claimed the Appellant came to her compound, approached the complainant and sent her to buy some cigarettes. Later, P.W.1 took the complainant to P.W.2 where she was told where her daughter (complainant) was found dressing up. P.W.2 said she was told by her daughter that she was feeling pain because she had been defiled by the Appellant. P.W.2 reported the incident to Mweiga Police Station. Police Constable Margaret Mwangi (P.W.4) told the trial court that P.W.2 reported to her on 7th April 2006 that her daughter (complainant) had been defiled by the Appellant. P.W.4 escorted the child to hospital for treatment and examination. She later re-arrested the Appellant when he was presented to her by members of the public. Dr. Ann Wangui Kiburu (P.W.3) produced on behalf of Dr. Mwololo, a Medical Report on the complainant which revealed that the Complainant had been defiled. The record shows that the complainant was examined and treated on 12th April 2006. When placed on his defence, the Appellant denied the offence in his unsworn testimony. The Appellant alleged that the complainant’s father had a grudge against him.

Having given the brief history of the case which was before the trial court, let me now turn my attention to the merits or otherwise of the appeal. Though the Appellant listed four grounds in his petition of

appeal, those grounds appear to raise one main ground, that is to say that the Prosecution's case was not proved to the standard of beyond reasonable doubt. Mr. Kaigai, Learned Provincial State Counsel, was of the view that the case against the accused person was established beyond reasonable doubt. I have carefully re-evaluated the evidence. It is alleged that the offence took place on 7th April 2006. The medical report prepared by Dr. Mwololo shows that the complainant was taken for medical examination and treatment on 12th April 2006. There is no explanation as why the complainant was not taken for treatment nor examination almost immediately. According to the evidence of P.W.1, P.W.2 and P.W.4, the complainant was taken to hospital the same day i.e. on 7/4/2000. I find the trio to be false witnesses. The evidence of the Medical Report are of no evidential value because the same did not link the Appellant to the offence. The complainant was not found to have any spermatozoa. It is clear from the recorded evidence that the complainant testified through an intermediary. No explanation was offered to justify that. The Appellant was not subjected to any medical examination to create the link. The police did not investigate the case. This is one of those cases which was poorly investigated. It would appear the police were being forced to take the Appellant to court. They were reluctant from the outset to launch any serious investigation. They did not even visit the accused's house to arrest the culprit. They waited for the members of public to arrest the Appellant to act. The Medical Report prepared by Dr. Mwololo was produced by P.W.3.. No justification was made to authorize P.W.3 to produce it. I have belaboured to look at the entire case to show that the Prosecution's Case was not proved to the required standard of beyond reasonable doubt.

In the end, the appeal is allowed. The conviction is quashed and life sentence is set aside. The Appellant is hereby set free forthwith unless lawfully held.

Dated and delivered this 6th day of July 2012.

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J. K. SERGON
JUDGE