



**Achira v Republic (Criminal Appeal E032 of 2022)
[2025] KEHC 634 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E032 OF 2022
JR KARANJA, J
JANUARY 28, 2025**

BETWEEN

MIKE MOSE ACHIRA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant Mike Mose Achira appeared before Resident Magistrate at Kericho facing a charge of defilement, contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*.
It was alleged that of diverse dates between the 16th September, 2024 and October, 3rd 2021, the Appellant defiled a girl child aged Fifteen (15) years or that in the alternative he committed an indecent act with the child contrary to Section 11 (1) of the *Sexual Offences Act*.
2. After a full trial, the Appellant was convicted and sentenced on the main count to ten (10) years imprisonment. Being dissatisfied with the conviction and sentence, the Appellant preferred the present appeal on the basis of the grounds contained in his petition of appeal filed herein on 29th September, 2022.
3. At the hearing of the appeal, the Appellant appeared in person and presented written submissions together with amended grounds of appeal. The Respondent was represented by the learned prosecution counsel Mr. Masisa. In its written submissions, the Respondent opposed the appeal on conviction but conceded that the sentence imposed by the Trial Court was improper as the Appellant was a minor aged seventeen (17) years as at the time of the commission of the offence.
4. The duty of this court at this juncture was to revisit the evidence and draw its own conclusion bearing in mind that the Trial Court had the benefit of seeing and hearing the witnesses. In that regard, the prosecution case was briefly that the complainant child (Pw1) was at the material time aged fifteen (15) years and a form one student at [Particulars Withheld] High School. At around 11.00am on the 15th



September, 2024, she proceeded to a local shopping centre to purchase school uniforms when she met and was seduced by the Appellant who carried her around on his motor cycle before taking her to his rental house where he hosted her.

5. While in the house, the Appellant engaged the complainant romantically and in the process defiled her. Thereafter, on the following day the duo proceeded to a local hotel where they met the complainant's cousin who took her away from the Appellant.

All along, the complainant's father, BB (Pw3) and mother MB (Pw2) were under the impression that the complainant had gone missing while at the local shopping centre since she had not returned home after two or three days.

6. The complainant parents went looking for her in vain upto the time she was spotted and "rescued" by her cousin. The parents learnt that she had been living with the Appellant who was arrested even as the complainant was subjected to medical examination which revealed that she was a minor and that she had been defiled. The Appellant was arraigned in court after the police concluded the investigations.
7. The Appellants defence was a denial and contention that he did not know the complainant and did not defile her. He implied that he was implicated by the complainant's cousin one Victor with whom he carried on some business. He said that he was at the time a student learning mechanics.
8. The trial court considered all the evidence and arrived at the conclusion that the main count of defilement had been proved against the Appellant beyond reasonable doubt. This court, having reconsidered the evidence is satisfied that the trial court conclusion was proper in as much as it was founded on cogent and credible evidence availed by the prosecution through the complainant (Pw1) and the doctor (Pw4) both of whom established and proved that the complainant was a minor aged fifteen (15) years at the material time of the offence and that she was sexually penetrated through her female sexual organ by the Appellant through his male sexual organ.
9. The defence raised by the Appellant was shattered by the very strong evidence against him thereby rendering it an afterthought. He underwent a medical examination which revealed that he was aged nineteen (19) years at the material time of the offence. This therefore was a case of an adult engaging in sexual intercourse with a minor thereby bringing the Appellant into conflict with the law even if the complainant was a willing participant on consented or the act.
10. It is the finding of this court that the Appellant's conviction by the trial court was both safe and sound and is hereby affirmed. With regard to the sentence, it was lawful in as much as the Appellant was sentenced as an adult based on the police medical report (P3) form (P. Exhibit 1 (b) and his own statement. (P.E exhibit 6) to the police which indicated that he was aged nineteen (19) years at the material time of the offence. He never challenged the age nor did he raise the issue of his age during the trial. The issue only comes up strongly on appeal.
11. However, the lower court record shows that at one point in the year 2021, to be precise, the 7th October 2021, the Appellant prior to the taking of plea indicated that he was aged Seventeen (17) years. The prosecution therefore requested for an age assessment report (AAR) and the court made an order to that effect. Thereafter, on the 15th October 2021, the prosecution availed the necessary report dated 17th October 2021 and filed on the same date indicating that indeed the Appellant was aged seventeen (17) years. This meant that he was a minor when he committed the offence and ought to have been sentenced as a child and not an adult as this was a clear case of a male child defiling a female child. Both the offender and victim were minors at the time.
12. In the circumstances, the trial court's reliance on the p3 form and the Appellant's statement both of which showed that the Appellant was an adult at the material time was erroneous. It would therefore



follow that the ten (10) years imprisonment sentence meted out against the Appellant was undeserving, punitive and not in keeping with the Provisions of the *Children Act*.

13. It was for the reasons foregoing that the State/Respondent rightly conceded to the appeal on sentence. This court upholds the concession by allowing the appeal on sentence, but not conviction. Accordingly, the ten (10) years imprisonment sentence imposed on the Appellant be and is hereby set aside and substituted for a sentence for the period already served by the Appellant i.e approximately two (2) years and four (4) months. This therefore means that the Appellant be released forthwith unless otherwise lawfully held.

14. Ordered accordingly.

J.R. KARANJAH

JUDGE

DATED AND DELIVERED THIS 28TH DAY OF JANUARY, 2025.

J.R. KARANJAH

JUDGE.

In the presence of;

Masisa – State Counsel

Magwa Court Assistant

Appellant- Present in Person

