Theuri v Republic (Criminal Appeal 32 of 2021)
[2024] KEHC 8232 (KLR) (1 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8232 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CRIMINAL APPEAL 32 OF 2021

DKN MAGARE, J

JULY 1, 2024

BETWEEN

PAUL WACHIRA THEURI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the Conviction and Sentence of Hon. K. M. Njalale (PM) in Karatina PM Sexual Offence No. 52 of 2020,dated 27th September, 2021)

Elements to prove the offence of defilement

The appeal was against the conviction and sentence of the appellant for the offence of defilement. The court highlighted the elements required to prove the offence of defilement. The court found that medical evidence was not necessary to prove penetration. However, in absence of medical evidence, the test was more severe. The court held that the appellate court could only interfere with sentence if it was severe or certain factors, which were decisive in character were ignored or irrelevant factors considered. The court also highlighted grounds to be applied in sentencing.

Reported by Kakai Toili

Criminal Law *– sexual offences – defilement - elements to prove the offence of defilement – penetration - whether medical evidence was necessary to prove penetration in a case of defilement – Sexual Offences Act (cap 63A), section 2.*

Criminal Procedure *– sentencing - grounds to be applied in sentencing - when could an appellate court interfere with a trial court's sentence.*

Brief facts

The appellant had been charged with defilement of a child aged 10 years. The appellant was also charged with an alternative count of indecent act with the minor. The trial court convicted and sentenced the appellant to life imprisonment for the offence of defilement. Aggrieved, the appellant filed the instant appeal on among other grounds; the trial court erred in law and fact in holding that the appellant had defiled the complaint when

the charge had not been proved beyond reasonable doubt. The appellant sought that the sentence be set aside and conviction quashed.

Issues

i. What were the elements to prove the offence of defilement?
ii. Whether medical evidence was necessary to prove penetration in a case of defilement.
iii. What were the grounds to be applied during sentencing and when could an appellate court interfere with a trial court's sentence?

Held

1. The minor's full names were used contrary to the dictates of the Children Act. There was a constitutional imperative of protecting the identity of minors. That was not proper. The right to privacy and concealing of the minor's identity was sacrosanct. Whether the Act required that the court directs or not, the names of children should always be abbreviated.
2. Being a first appeal, the court was under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.
3. In defilement, the elements to prove were;
    1. proof of the age of the victim;
    2. proof of penetration; and
    3. identification of the offender.
4. The elements were proved vide evidence. Age could be proved by common sense, documents or by deduction. The aspect of penetration could be partial or complete. The length and duration did not matter. Section 2 of the Sexual Offences Act, defined penetration to mean: the partial or complete insertion of the genital organs of a person into the genital organ of another person. Penetration was not a matter of law but that of fact. Medical evidence was not necessary to prove penetration. However, in absence of medical evidence, the test was more severe.
5. The trial court found that the complainant was precise as to the happenings. The trial court believed her. It was the trial court that heard and saw the witnesses. By dint of section 124 of the Evidence Act the complainant's evidence was enough to convict even in absence of any medical evidence. Even in issues of circumstantial evidence, the appellant was left with the minor who was in his company from school to home. He arrived home late on November 28, 2020 with a bleeding child. Surely, bleeding started somewhere in between. There was no one with an opportunity to defile the child. Even if an unidentified flying object came, an explanation was needed. In absence of such, the circumstances irresistibly led to the guilt of the appellant.
6. The appellant was the only one with the child at all the times. The evidence ostensibly pointed to his guilt. For circumstantial evidence to work, it must be inconsistent with the accused's innocence.
7. The appellant's alibi was not solid. It was a sieve that required no response. The dates in issue had no alibi.
8. There was no contradiction in evidence. There could be a few discrepancies which were expected from the nature of knowledge each witness had. There was no congruence of events to have consistent evidence. Each party gave evidence on the points in time and place that they played. No two witnesses witnessed the same thing.
9. The totality of the evidence pointed that the evidence was inconsistent with the appellant's innocence. When the appellant stated that his evidence was disregarded, was not true. The appellant confirmed he was with the child during the period the child indicated the offence happened. He raised issues of the state of the road where the offence was committed. The age of the minor was proved as well as penetration by the appellant. There was overwhelming evidence that was not displaced.

10. There was no witness that was left out. In any case section 143 of the Evidence Act provided that no particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact. The prosecution proved its case beyond reasonable doubt.
11. The appellate court could only interfere with sentence if it was severe or certain factors, which were decisive in character were ignored or irrelevant factors considered. The grounds to be applied in sentencing were;
    1. age of the offender;
    2. being a first offender;
    3. whether the offender pleaded guilty;
    4. character and record of the offender;
    5. commission of the offence in response to gender-based violence;
    6. remorsefulness of the offender;
    7. the possibility of reform and social re-adaptation of the offender;
    8. probation officer's pre-sentencing report; and
    9. any other factor that the court considered relevant.
12. Sentence was a question of fact. Sentence was a matter of discretion of the trial court. The sentence was thus a proper one. However, a binding precedent required the court to equate the life sentence to a term sentence. The trial court considered mitigation but said that its hands were tied. The instant court would untie them. Balancing the scales, the life sentence was appropriate. Nevertheless, in equating the sentence, the crime was not committed with unnecessary violence. It was an SGBV. All factors considered, the sentence would be equated on basis of precedent. The sentence of life imprisonment was well deserved. There was no error in meting out the sentence.

Appeal dismissed.

Orders

i. *The appeal on conviction was dismissed.*
ii. *The appeal on sentence was equally dismissed. However, the Court of Appeal required that life imprisonment be equated to a term sentence. The court therefore equated the life sentence and substituted with term sentence of 30 years.*
iii. *Pursuant to section 333(2) of the Criminal Procedure Code, the sentence of 30 years shall run from the date of arrest November 25, 2020, excluding the period between December 8, 2020 and September 27, 2021 both days inclusive when the appellant was on bond.*
iv. *Right of appeal 14 days.*

Citations

Cases

1. Abanga alias Onyango v Republic (Criminal Appeal 32 of 1990) — Explained
2. Ahamad Abolfathi Mohammed & another v Republic (Criminal Appeal 135 of 2016; [2018] KECA 743 (KLR)) — Explained
3. AML v Republic (Criminal Appeal 74 of 2011; [2012] KEHC 2554 (KLR)) — Explained
4. Ayako v Republic (Criminal Appeal 22 of 2018; [2023] KECA 1563 (KLR)) — Explained
5. Bernard Kimani Gacheru v Republic (Criminal Appeal 188 of 2000; [2002] KECA 94 (KLR)) — Explained
6. Boaz Nyanoti Samwel v Republic (Criminal Appeal E015 of 2020; [2022] KEHC 1108 (KLR)) — Explained
7. Edwin Nyambaso Onsongo v Republic (Criminal Appeal 39 of 2014; [2016] KEHC 4738 (KLR)) — Explained
8. Erick Onyango Ondeng' v Republic (Criminal Appeal 5 of 2013; [2014] KECA 523 (KLR)) — Explained

9. George Mbaya Githinji v Republic (Criminal Appeal 30 of 2017; [2019] KEHC 4487 (KLR)) — Explained
10. GOO v Republic (Criminal Appeal 37 of 2015; [2016] KEHC 800 (KLR)) — Explained
11. Jackson Mwanzia Musembi v Republic (Criminal Appeal 42 of 2016; [2017] KECA 748 (KLR)) — Explained
12. Kassim Ali v Republic (Criminal Appeal 84 of 2005; [2006] KECA 156 (KLR)) — Explained
13. Kimotho Kiarie v Republic (Criminal Appeal 93 of 1983; [1984] KECA 65 (KLR)) — Explained
14. Manyeso v Republic (Criminal Appeal 12 of 2021; [2023] KECA 827 (KLR)) — Applied
15. MB v Republic (Criminal Appeal 219 of 2019; [2024] KECA 324 (KLR)) — Explained
16. Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated); [2017] KESC 2 (KLR)) — Explained
17. Mwalango Chichoro Mwanjembe v Republic (Criminal Appeal 24 of 2015; [2016] KECA 183 (KLR)) — Explained
18. Sawe v Republic (Criminal Appeal 2 of 2002; [2003] KECA 182 (KLR)) — Explained
19. Wamunga v Republic (Criminal Appeal 20 of 1989; [1989] KECA 47 (KLR)) — Explained
20. Twehangane Alfred v Uganda ((Criminal Appeal No. 139 of 2001) [2003] UGCA 6 (17 February 2003)) — Explained
21. R v Lifchus ([1997]3 SCR 320) — Explained
22. Abdalla Wendo v Republic ((1953) 20 EACA 166) — Explained
23. Ogalo S/O Owuora Versus Republic ([1954] 24 EACA) — Explained
24. Okeno v Republic ([1972] EA 32) — Explained
25. Pandya v Republic ([1957] EA 336) — Explained
26. Peters v Sunday Post Limited ([1958] EA 424) — Explained
27. Shantilal M. Ruwala v R ([1957] EA 570) — Mentioned
28. Woolmington v DPP ([1935] UKHL 1;[1935] AC 462) — Explained
29. In re Winship (397 U.S. 358 (1970)) — Explained

Statutes

1. Borstal Institutions Act (cap 92) — In general — Cited
2. Children Act (cap 141) — section 94 — Interpreted
3. Children Act, 2001 (Repealed) — section 19 — Interpreted
4. Constitution of Kenya — article 50(7) — Interpreted
5. Criminal Procedure Code (cap 75) — section 333(2) — Interpreted
6. Evidence Act (cap 80) — section 124, 143 — Interpreted
7. Oaths and Statutory Declarations Act (cap 15) — section 19 — Interpreted
8. Penal Code (cap 63) — section 38 — Interpreted
9. Sexual Offences Act (cap 63A) — section 2; 8(1)(2)(5)(6)(7)(8) — Interpreted
10. Witness Protection Act (cap 79) — In general — Cited

Texts

1. Hogg, QM., (Lord Hailsham) et al (Eds) (1995), Halsbury's Laws England (London: Butterworth 4th Edn Vol 17 paras 13, 14)
2. National Council on the Administration of Justice (2023), Sentencing Guidelines, 2023 (Nairobi:National Council on the Administration of Justice)

Advocates

Ms Wandia Njuguna for Mr. Wahome for Appellant
Ms. Kaniu for Respondent

JUDGMENT

1. This is an appeal from conviction and sentence given on 27/9/2021 in Karatina – SPMC SO No 52 of 2020 by the Principal Magistrate Hon KM Njalale.

2. The appellant was aggrieved by conviction and sentence and filed an eight paragraph petition of appeal. The grounds were: -

    i. The learned trial magistrate erred in law and fact in holding that the appellant had defiled the complaint when the charge had not been proved beyond reasonable doubt. A miscarriage of justice was thereby occasioned.

    ii. The learned trial magistrate erred in law and fact in not holding and finding that there was sufficient doubt in the prosecution evidence, which doubt ought to have been resolved in favour the appellant. A miscarriage of justice was thereby occasioned.

    iii. The learned trial magistrate erred in law and fact in shifting the burden of proof from the prosecution to the appellant to prove his innocence. A miscarriage of justice was thereby occasioned.

    iv. The learned trial magistrate erred in law and fact in failing to consider and find out whether the complainant's evidence is credible and holding that the same was corroborated without giving cogent reasons or testing the same. A miscarriage of justice was thereby occasioned.

    v. The learned trial magistrate dismissed the accused's alibi without testing the same or any valid reasons. A miscarriage of justice was thereby occasioned.

    vi. The learned trial magistrate erred in law in not finding and holding that the vital witnesses were not called and their evidence which should have been produced would have been unfavorable to the prosecution.

    vii. The learned trial magistrate erred in law in relying in the evidence of a minor without complying with the provisions of section 124 *Evidence Act*. A miscarriage of justice was thereby occasioned.

    viii. Considering that all the circumstances of the case, the sentence meted out is manifestly harsh, excessive and against the weight on record.

    ix. In dismissing the accused's alibi without testing the same or any valid reasons, a miscarriage of justice was occasioned.

3. He sought that the sentence be set aside and conviction quashed. The state filed on 13/3/2024 while the appellant filed submissions on 15/3/2024. Directions were given during service week. The matter came up for judgment on 15/5/2024 when the appellant was not produced. I have adjourned twice till today when I put my foot down to have the appellant produced virtually from Manyani maximum security prisons.

4. The appellant had been charged with defilement contrary to section (1) as read with 8(2) of the *Sexual Offences Act* No 3 of 2006. The particulars were that the appellant on 27 and 28/10/2020 at [particulars withheld] village Kirimukuyu location in Mathira west sub county within Nyeri County intentionally caused his penis to penetrate the vagina of RN, a child aged 10 years.

5. In the lower court, the appellant was charged with an alternative count of indecent act with a minor under section 8(1) and 8(2) for which the appellant was charged that on 27 and 28/10/2020 at [particulars withheld] village Kirimukuyu location in Mathira west sub county within Nyeri County intentionally touched with his fingers the vagina of RN, a child aged 10 years.

6. I note that the minor's full names were used contrary to the dictates of the *Children Act*. Section 19 of the repealed *Children Act, 2001*, provided as doth: -

> " Every child shall have the right to privacy subject to parental guidance."

7. The current *Children Act* provide as doth: -

> " 94. Where in any proceedings relating to an offence against or by a child, of a sexual nature, a person who, in the opinion of the court, is under the age of eighteen years is called as a witness, the court shall direct that such witness be protected by one or more of the following measures-
>
> (a) allowing such witness to give evidence under the protective cover of a witness protection box;
>
> (b) directing that the witness shall give evidence through an intermediary pursuant to article 50(7) of the *Constitution*;
>
> (c) directing that the proceedings do not take place in open court;
>
> (d) prohibiting the publication of the identity of the complainant or of the complainant's family, including publication of any information that may lead to the identification of the complainant or the complainant's family;
>
> (e) any other measure which the court deems just and appropriate; or No 29
>
> (f) any other safeguards provided under the *Witness Protection Act*, 2006 or any other written law. No 16 of 2006."

8. There is a constitutional imperative of protecting the identity of minors. This was not proper. The right to privacy and concealing of the minor's identity is sacrosanct. Whether the act requires that the court directs or not, the names of children should always be abbreviated.

Evidence

9. Plea was taken on 22/11/2020. The appellant was released on bond on 8/12/2002. After a few mentions the matter proceeded on 25/3/2021. The court carried on comprehensive *voire dire*. The court found that the minor was to give unsworn testimony. She gave evidence that she was 10 years old born on 12/10/2010. She had a birth certificate. She stayed with her grandmother.

10. The appellant had been picking the minor from school for 2 weeks.

11. The complainant knew the appellant. One day he picked the minor from school. During the time only class 4 and 8 were in school. She stated that only standard 4 were going home as standard 8 students were minors. The appellant down the minors pacing he did tabia mbaya to her. She was facing up. He removed his penis and inserted in the complainant's vagina. The minor told no one. The following day

he repeated the exercise. The minor bled. Her grandmother gave her pad. On 22/11/2020 the minor said what had happened. The minor had bled for 2 days. The grandmother reported.

12. After he had defiled the minor he called in that his bike was spoilt. He left for good. She was scared to tell the grandmother. The appellant in cross examination insinuated that it is Paul Munyi that defiled the minor. This was not the same evidence in defence.

13. PW2 ENN testified. She stated that the appellant was taking the minor to school till 14/6/2021 when he called that his motor cycle was spoilt. She stated that the minor came from school bleeding and she had to borrow pads. She thought it was periods. When they were not there in the 2nd month she enquired. She was told that the appellant had defiled the minor. She reported. On cross examination she stated that she reported after the child said that she was in pain.

14. PW3 JM testified that on 19/10/2020 he gave the appellant some work. He identified the appellant at the dock. He was taking the grandchild to school and back. He was paid Kshs 200/= per day.

15. He stated that his bike was spoilt. He organized for another motor bike. On 27/10/2020 he came late at 6:30. When asked he stated the bike had spoilt. The child was not looking well. From 29/11/2002 he did what he should have done from the beginning, take the child to school himself. He was informed that the appellant defiled the minor. They had a good relation. On cross examination, which the court writes both in the 2nd and third person, he stated that the appellant worked from 19/10/2020 to 28/10/2020, a week and 3 days. He denied Paul Munyi was involved.

16. PW4 Dr Stephen Nderitu testified that he was MBchB. He had been in Karatina since 2012. Dr Mburu filled the report. Cross examination was reported in a pronoun sense in third person voice. I wish the court could record as a noun voice. The Dr Testified that doctor Mburu examined the minor and found the hymen absent and filled P3 and PRC forms. She reported a defilement by boda boda [Okada] rider. No cross examination was done.

17. PW5 PC Gladys Nzillani testified that on 23/11/2020 PW2 reported defilement by the appellant of a class 4 – 10 year old granddaughter. The child was taken to hospital and she was examined. A P3 and PRC were filled. The minor and the grandparents took the witness to the accused (dock identification done). He produced a birth notification. On cross examination, the witness stated that the minor bled but the grandmother thought it was normal menses. He stated that the Appellant had threatened the minor.

18. On being placed on his defence, he stated, that on 21/10/2022 he went to pick the child at 4 pm from school and back. He started working on 22/10/2022. He worked till l5/11/2020 when his bike got spoilt. He stated that as at 1/2/October he had not started working for the parents. He stated that he was arrested in trials to protect her identity. The court considered the evidence and submissions.

19. The appellant set out some of the most dangerous defences. I can call it a convoluted or transferred *alibi*. In this case they categorically posited that it is not them but Paul Munyi. One will think that such a defence will be accompanied by evidence of Paul Munyi doing so. He stated that on 24/11/2020 the minor's aunt came and wanted to buy a cow. They came on 25/11/2020 and arrested him. This is the same time he indicated he cannot be found.

20. On cross examination he stated that on 27/20/20/2020 he was the one taking the minor to school. The court convicted and sentenced the appellant on 27/9/2021. The judgment analyzed evidence and correctly pointed out that the minor should be referred by cogent evidence.

21. The court considered the totality of evidence and convicted the appellant. Upon mitigation. The court sentenced the appellant to life imprisonment.

Analysis

22. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand.

23. This was aptly stated in the case of *Peters v Sunday Post Limited* [1958] EA 424 where, the Court of Appeal therein rendered itself as follows:-

> " It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion..."

24. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in *Pandya v Republic* [1957] EA 336 is as follows:-

> " On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court differing from the Judge or magistrate even on a question of fact turning on the credibility of witnesses whom the appellate court has not seen."

25. In the case of *Okeno v Republic* [1972] EA 32 at 36 the East Africa Court of Appeal stated on the duty of the court on a first appeal:

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v R,* [1957] EA 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M Ruwala v R,* [1957] EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v Sunday Post,* [1958] EA 424."

Burden of Proof

26. In the case of Denny Muraya the court stated that the ingredients of defilement are: -

    a. Age

b. Penetration

c. The appellant was the perpetrator

24. The offence of defilement is set out in section 8(1) of the *Sexual Offences Act*, and possible defences in section 8(5) – (8) of the same Act. The said section provides as follows: -

(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

(5) It is a defence to a charge under this section if-

(a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and

(b) the accused reasonably believed that the child was over the age of eighteen years.

(6) The belief referred to in subsection (5)(b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.

(7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the *Borstal Institutions Act* (cap 92) and the *Children Act, 2001* (No 8 of 2001).

(8) The provisions of subsection (5) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity."

27. The duty of the 1st appellate court is settled. It is to re-evaluate evidence by the way of retrial, coming to my own conclusion but giving room for the impressions, and demenour that were observed in the court that heard the matter. It is also altruism that evidence will speak and where there are contradictions and major discrepancies the court will discount them in favour of the accused.

28. However, a conviction can still ensue, if the court finds credible and cogent evidence other than discredited witnesses.

29. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. This was aptly stated in the case of *Peters v Sunday Post Limited* [1958] EA 424 where, the Court of Appeal therein rendered itself as follows:-

> " It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction

to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”

30. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in *Pandya v Republic* [1957] EA 336 is as follows:-

> “On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court’s own consideration and views of the evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court differing from the Judge or magistrate even on a question of fact turning on the credibility of witnesses whom the appellate court has not seen.”

31. In the case of *Okeno v Republic [*1972] EA 32 at 36 the East Africa Court of Appeal stated on the duty of the court on a first appeal:

> “An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v R*, [1957] EA 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v R*, [1957] EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v Sunday Post*, [1958] EA 424.”

32. The issue in this case is whether the prosecution proved its case to the required standards. Most oft quoted English decision by Viscount Sankey LC in the case of *HL (E) Woolmington v DPP* [1935] AC 462 pp 481, comes in handy in describing the legal burden of proof in criminal matters, that;

> “Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

33. In the case of *R v Lifchus* [1997]3 SCR 320 the Supreme Court of Canada explained the standard of proof as doth:-

> " The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty...the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilty beyond reasonable doubt."

34. According to *Halsbury's Laws of England*, 4th Edition, Volume 17, paras 13 and 14:

> " The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case of with separate issues."

35. The standard of proof required in such cases was addressed by Brennan, J in the United States Supreme Court decision in *Re Winship* 397 US 358 {1970}, at pages 361-64 stated that:-

> " The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatised by the conviction...Moreover use of the reasonable doubt standard is indispensable to command the respect and confidence of the community. It is critical that the moral force of criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned."

36. Being a case of defilement the prosecution was under duty to prove that the offence occurred and:-

a. There was penetration of the complainant's vagina. The same applies where the charge is penetration of the anus.

b. That the complainant was a minor and the age thereof. For age even approximate age will be appropriate in cases of toddlers. It will be irrelevant for example whether a child is 4 or 7 years. Common sense will prevail in that where more strict application is required is towards 15-18 years. These are borderline cases, where genuine mistakes can be made.

37. In the case of *George Opondo Olunga v Republic* (2016) eKLR the court settled that in defilement, the elements to prove are:

a. proof of the age of the victim,

b. proof of penetration and

c. Identification of the offender.

38. The elements are proved *vide* evidence. Age can be proved by common sense, documents or by deduction. For example, if the mother is 25 years old, there is no way the child born of such a mother can be above 18. The less we say of the father, the better as it has no bearing on the age of the minor. In Joseph *Kibet Seet v Republic* (2014) eKLR the court stated as follows: -

> " the age of a victim can be determined by medical evidence and other cogent evidence. In the case of *Francis Omuroni v Uganda,* Court of Appeal Criminal Appeal No 2 of 2000. It was held thus: In defilement case, medical evidence is paramount in determining the age of the victim and the doctor is the only person who could professionally determine the age of the victim in the absence of any other evidence. Apart from medical evidence age may also be proved by birth certificate, the victim's parents or guardian and by observation and common sense..."

39. The Kenyan Court of Appeal in the case of *Mwolongo Chichoro Mwanyembe v Republic*, Mombasa Criminal Appeal No 24 of 2015) (UR) (cited with approval in *Edwin Nyambaso Onsongo v Republic* [2016] eKLR) stated that:-

> " ...the question of proof of age has finally been settled by recent decisions of this court to the effect that it can be proved by documents, evidence such as a birth certificate, baptism card or by oral evidence of the child if the child is sufficiently intelligent or the evidence of the parents or guardian or medical evidence, among other credible forms of proof." "..we think that what ought to be stressed is that whatever the nature of evidence preferred in proof of the victim's age, it has to be credible and reliable."

40. The aspect of penetration can be partial or complete. The length and duration does not matter. Section 2 of the *Sexual Offences Act*, defines penetration to mean:

> " the partial or complete insertion of the genital organs of a person into the genital organ of another person.".

41. Penetration is not a matter of law but that of fact. Medical evidence is not necessary to prove penetration. However, in absence of medical evidence, the test is more severe. In the case of *Boaz Nyanoti Samwel v Republic* [2022] eKLR, the court stated as follows: -

> " It is however settled law that medical evidence is not the only evidence that can prove a sexual offence. In *AML v Republic* (2012) eKLR the Court of Appeal stated that:-
>
> > " It was submitted that there was no medical evidence to connect the appellant with the offence as no DNA test was conducted. The position of the law is that the offences of rape and defilement are proved by way of oral evidence and circumstantial evidence and not necessarily by medical evidence."

39. The same court in *Kassim Ali v Republic*, Mombasa Criminal Appeal No 84 of 2005 stated that:

> "(The) absence of medical examination to support the fact of rape is not decisive as the fact of rape can be proved by oral evidence of a victim of rape or circumstantial evidence."
>
> In the absence of medical evidence to support the offence, the question was whether there was sufficient oral or circumstantial evidence to prove penetration on the complainant."

42. The minor gave evidence that was unshaken. The court found that the minor is consistent and eloquent but was not to be sworn because she did not know what an oath is. The cross examination did not help the appellant at all. He blamed another person, that is Paul Munyi for the offence.

43. The minor stated she was not injured but bled. It is common sense, that the minor was referring to injury in other parts other than the vagina. The appellant had been entrusted with the minor to take to school. After sometime he decided to defile her in a bush.

44. It was the minor's assertion that only class 4 pupils were going home. The standard 8 pupils were borders. Some of the questions asked were not relevant to the offence of defilement. The minor did not understand the enormity of the crime that had been committed against her. The minor simply took a bath. It is after a month that periods did not come that she told the grandmother. This is a normal behaviour for children who are told not to discuss sexual matters openly.

45. She was also a child of tender years. The appellant cross examined that it is another person, Paul Munyi who defiled the minor. That could as well be true. It does not remove the defilement from the appellant. Defilement by one person does not rule out defilement by another. However, there was no such evidence. Defilement is not a discrete occurrence, where happening of one event excludes another. The probability of multiple defilements are up to infinity. I do not take seriously that someone else did it.

46. From the evidence of PW3, it came out that after the happening of the event, the appellant had accomplished his mission and declined to continue transporting the child. It was stated that on the date in issue the child was brought late. The incident was not challenged at all.

47. Dr Stephen Nderitu's evidence corroborated the minor's evidence. It is the person who used to take the child to school who defiled her. There were only two people who did that, that is the appellant and PW3. The minor was clear that it is the appellant. Her evidence was steadfast. I find her evidence was cogent and solid. Section 124 of the *Evidence Act* provides as follows: -

> "Notwithstanding the provisions of section 19 of the *Oaths and Statutory Declarations Act* (cap 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him:
>
> Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth."

48. The court found that the complainant was precise as to the happenings. That is to say the court believed her. It is the trial court that heard and saw the witnesses. I find no fault in finding her as untruthful witness. By dint of section 124 her evince is enough to convict even in absence of any medical evidence.

49. The question the court had to pose is this, the appellant was given a child to take to school and return her in the evening. She left school not bleeding in the company of the appellant. She arrived home bleeding from the vagina. She had not started menses and was feeling pain. Who was better placed than the appellant to explain.

50. Even in issues of circumstantial evidence, the appellant was left with the minor who was in his company from school to home. He arrived home late on 28/11/2020 with a bleeding child. Surely, bleeding started somewhere in between. There was no one with an opportunity to defile the child. Even if an unidentified flying object came, an explanation was needed. In absence of such, the circumstances irresistibly lead to the guilt of the appellant.

51. He was the only one with the child on all this time. The evidence ostensibly points to his guilt. For circumstantial evidence to work, it must be inconsistent with the accused's innocence. In the case of *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, court had this to say on circumstantial evidence:

> "However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr App R 21: -
>
> > "It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial."

52. In the case of *Abdalla Wendo v Republic* (1953) 20 EACA 166 it was held that:

> "Subject to certain well-known exceptions it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring correct identification were difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or directly pointing to guilt, from which a Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error."

53. In the case of *Abanga alias Onyango v Republic* CR App No 32 of 1990(UR) in which the Court of Appeal stated as follows: -

> "It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i)the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the

conclusion that within all human probability the crime was committed by the accused and none else."

54. In the case of *Sawe vs. Republic* [2003] KLR 364, the Court of Appeal, posited as doth: -

> "In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remain with the prosecution. It is a burden which never shift to the party accused."

55. The appellant attempted to unsuccessfully set up an *alibi*. He relied on the evidence of PW3 to state that he was not working with the complainant on 1st and 2nd October when the appellant was not working for the complainant's parents. He started working on 22/10. I presume this relates to October 2020.

56. The parents were not sexually assaulted. It was the minor PW1. She testified regarding the period of 2 weeks starting from 27/10/2020 and end of those weeks. The *Alibi* set is therefore no *alibi*. In a case of *Kimotho Kiarie v Republic* [1984] eKLR, relied on by the appellant, the Court of Appeal stated as follows: -

> "An *alibi* raises a specific defence and an accused person who puts forward an *alibi* as an answer to a charge preferred against him does not in law thereby assume any burden of proving that answer and it is sufficient if an *alibi* introduces into the mind of a court a doubt that is not unreasonable; *Said v Republic* [1963] EA 6. The judge erred in accepting the Senior Resident Magistrate's finding in the alibi because the finding is not supported by any reasons."

57. Nevertheless, the *alibi* is not solid at all. It is a sieve that requires no response. The dates in issue have no *alibi*. The court correctly proceeded in this matter. The rest of the issues raised in submissions have been addressed.

58. I do not find any contradiction in evidence. There could be a few discrepancies which are expected from the nature of knowledge each witness had. There was no congruence of events to have consistent evidence. Each party gave evidence on the points in time and place that they played. No two witnesses witnessed the same thing. The way to treat contradictions in a case was stated by the Court of Appeal in *Jackson Mwanzia Musembi v Republic* (2017) eKLR where the court cited with approval the Ugandan case of *Twahangane Alfred –Vs- Uganda* CR Appeal No 139 of 2002 (2003) UGCA,6 where it was held that:

> "with regard to contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution's case".

59. The totality of the evidence point that the evidence is inconsistent with the appellant's innocence. When the appellant states that his evidence was disregarded, is not true. The appellant confirmed he

was with the child during the period the child indicated the offence happened. He raised issues of the state of the road where the offence was committed.

60. The age of the minor was proved as well as penetration by the appellant. There was overwhelming evidence that was not displaced. Even the issue of Paul Munyi was raised at cross examination and not evidence. There was nothing to displace.

61. On cross examination he confirmed that on 27/28 October he was the one ferrying the child. I do not find the defence tenable. The appellant was positively identified by the minor. The entire evidence linked the appellant to the crime. His own testimony placed him at the scene of crime. The court in *Wamunga v Republic* [1989] KLR 424 at 426 had this to say:

> "Where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction."

62. On the issues of a witness not called, there is none that was left out. In any case section 143 of the *Evidence Act* provides as follows: -

> "No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact."

63. The Court of Appeal (Githinji, Musinga & M'inoti JJA) in the case of *Erick Onyango Ondeng' v Republic* Criminal Appeal No 5 of 2013; [2014] eKLR stated as follows: -

> "While fully in agreement with the above statement, it should be remembered that the context in which it was made is that of a case in which the evidence called is barely adequate. In the present case, the proviso to section 124 of the *Evidence Act* and the medical evidence must be borne in mind as well section 143 of the *Evidence Act* (cap 80) which provides that, in the absence of any requirement by provision of law, no particular number of witnesses shall be required for the proof of any fact. In this appeal, it is not clear to us what value the evidence of Violet would have added to the evidence of PW2, which the court found trustworthy, as well as the medical evidence. In our opinion, Violet would have been a peripheral witness as she was said to merely have happened by when the appellant was with PW2 on a different occasion.

64. Being a retrial, the court has re-evaluated the evidence and found without doubt that the prosecution proved its case beyond reasonable doubt. In the circumstances the appeal on conviction lacks merit and is accordingly dismissed *in limine*.

Sentence

65. The appellate court can only interfere with sentence if it is severe or certain factors, which are decisive in character were ignored or irrelevant factors considered. In *Ogalo S/O Owuora v Republic* 1954 24 EACA, the Court of Appeal for Eastern Africa stated as thus: -

> "an appellate court has the power to interfere with the sentence passed by the trial court if there is evidence that the learned magistrate or Judge acted on wrong principles, overlooked some relevant material or factors or that the sentence passed is illegal or manifestly excessive or punitive or too low as to occasion a miscarriage of justice."

66. In the case of *George Mbaya Githinji v Republic* [2019] eKLR, the court set forth grounds to be applied in sentencing as hereunder; -

a) Age of the offender;

b) Being a first offender;

c) Whether the offender pleaded guilty;

d) Character and record of the offender;

e) Commission of the offence in response to gender-based violence;

f) Remorsefulness of the offender;

g) The possibility of reform and social re-adaptation of the offender;

h) Probation Officer's Pre-sentencing Report

i) Any other factor that the court considers relevant.

67. The foregoing were factors set out in the case of *Muruatetu & another v Republic; Katiba Institute & 5 others (amicus curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment).

68. The *Sentencing Guidelines 2023* provide for the following: -

> " In determining the appropriate sentence, courts must assess a number of issues starting with the degree of both culpability and harm.
>
> 4.5.2 The assessment of culpability will be based on evidence of the crime provided through testimony where a trial has been conducted, or, where a plea is entered, through the prosecution summary of facts. Aggravating and mitigating features surrounding the offence may be advanced by the prosecution and the accused person (or his/her representative).
>
> 4.5.3 Where an offence is committed by more than one offender a court shall ascertain the culpability of each of the offenders involved and render individual sentences commensurate to their involvement in the offence.
>
> 4.5.4 The assessment of harm may be based on testimony, or the summary of facts presented and also by a victim impact statement where that has been obtained.
>
> 4.5.5 Mitigating factors refers to any fact or circumstance that lessens the severity or culpability of a criminal act and can also include the personal circumstances of the offender.
>
> 4.5.6 Convicted offenders should be expressly provided with the opportunity to present submissions in mitigation.
>
> 4.5.7 n/a
>
> 4.5.8 Having heard all relevant submissions and considered any reports advanced by either prosecution or defence, or the probation or children's officer (where applicable), and any victim impact statement, the court should: i. Decide as

to whether a custodial or a non-custodial sentence should be imposed in line with these guidelines.

ii. In the case of sexual offences, before the terms of a custodial sentence are determined, the court must have recourse to relevant probation reports as required in sections 39(2) and (4) of the *Sexual Offences Act* No 3 of 2006 that contain provisions about post-penal supervision of dangerous sexual offenders."

69. Nevertheless sentence is a question of fact. In a decision relied by the state noted that sentence is a matter of discretion of the trial court. In *Bernard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal [Chunga, CJ, Shah & Bosire, JJA] stated as hereunder: -

> " It is now settled law, following several authorities by this court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

70. The sentence was thus a proper one. However, a binding precedent requires this court to equate the life sentence to a term sentence. The court considered mitigation but said that her hands were tied. This court will untie them. In mitigation the appellant indicated that he has 3 young children aged 3, 5, and 6 years and a sole bread winner. The court also notes the circumstances of the offence. It was committed in breach of trust. The child was of tender years. Balancing the scales, the life sentence is still appropriate.

71. Nevertheless, in equating the sentence, the court notes that the crime was not committed with unnecessary violence. It was an SGBV. All factors considered, the court will equate the sentence on basis of precedent. The sentence of life imprisonment was well deserved. There was no error in meting out the sentence.

72. However, there has been 2 decisions of the Court of Appeal which interpreted what life imprisonment is. In *Evans Nyamari Ayako v Republic* Kisumu CACRA No 22 of 2018 (Okwengu, Omondi & J Ngugi, JJA) (unreported) translated life imprisonment to 30 years.

73. In the case of *Barasa v Republic* (Criminal Appeal 219 of 2019) [2024] KECA 324 (KLR) (15 March 2024) (Judgment), the Court of Appeal stated as follows: -

> " Given the circumstances in which the offence was committed, the complainant being a young girl whom the appellant as the stepfather ought to have protected but instead violated, the appellant deserved a deterrent sentence. The sentence of life imprisonment was an option which was available in the exercise of discretion in sentencing and would in our view have been appropriate.
>
> 13. In accordance with our decision in *Evans Nyamari Ayako v Republic* (*supra*), translating life imprisonment to a term sentence of 30 years' imprisonment, we allow the appellant's appeal; on sentence to the extent of substituting the sentence of life imprisonment that was imposed on the appellant with a

term sentence of 30 years' imprisonment. The sentence of 30 years shall be calculated from the date the appellant was first arraigned in court in accordance with section 333(2) of the *Criminal Procedure Code*.

74. In *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment), the Court of Appeal sitting in Malindi (Nyamweya, Lesiit and Odunga, JJA) held that life imprisonment is unconstitutional, and substituted the same with 40 years. They stated as follows: -

> " We recognize that although the Judiciary released elaborate and comprehensive Sentencing Policy Guidelines in 2016, there are no specific provisions for the sentence of life imprisonment, because it is an indeterminate sentence. Nevertheless, we are in agreement with the High Court decision in Jackson Wangui, *supra*, which found that it is not for the court to define what constitutes a life sentence or what number of years must first be served by a prisoner on life sentence before they are considered on parole. This is a function within the realm of the Legislature...
>
> ... We are therefore of the view that while the appellant should be given the opportunity for rehabilitation, he also merits a deterrent sentence. We, therefore in the circumstances, uphold the appellant's conviction of defilement, but partially allow his appeal on sentence. We accordingly set aside the sentence of life imprisonment imposed on the appellant and substitute therefor a sentence of 40 years in prison to run from the date of his conviction."

75. It is therefore my understanding that in each case we shall translate what life imprisonment means. In this case a sentence of 30 years translates to life imprisonment. I therefore substitute the life sentence, with its equivalent, that is, 30 years. The sentence run as per section 333(2) of the *Criminal Procedure Code* from date of arrest excluding any time the Appellant was on bond. The said section, 333(2) of the Criminal Procedure provides as follows: -

> " Subject to the provisions of section 38 of the *Penal Code* (cap 63) every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.
>
> Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody."

Order

76. The consequence upon the foregoing is that I make the following orders; -

a. The appeal on conviction is dismissed.

b. The appeal on sentence is equally dismissed. However, the court of appeal requires that life imprisonment be equated to a term sentence. I therefore equate the said life sentence and substitute with term sentence of 30 years.

c. Pursuant to section 333(2) of the *Criminal Procedure Code*, the sentence of 30 years shall run from the date of arrest 25/11/2020, excluding the period between 8/12/2020 and 27/9/2021 both days inclusive when the appellant was on bond.

d. Right of appeal 14 days.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 1ST DAY OF JULY, 2024.

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:

Ms Wandia Njuguna for Mr. Wahome for the Appellant

Ms. Kaniu for the Respondent

Appellant present from Manyani Maximum Prison.

Court Assistant – Jedidah