



Sila v Republic (Criminal Appeal 51 of 2019) [2023] KEHC 21233 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL APPEAL 51 OF 2019
RB NGETICH, J
JULY 26, 2023**

BETWEEN

JOSEPH SILA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant Joseph Silawas charged with two counts of offences. Count I is the offence of Sexual Assault contrary to section 5 (1) (a) (1) (2) of *Sexual Offences Act* No. 3 of 2006. Particulars on Count I are that on the 12th day of March, 2019, at around 1600hrs in Baringo North Sub-County within Baringo County unlawfully used his fingers to penetrate the Virgina of CD.
2. Count II is the offence of Assault causing actual bodily harm contrary to section 251 of the *Penal Code*. Particulars are that on 12th day of March 2019 at about 1800 hrs in Baringo North Sub-County within Baringo County, he unlawfully assaulted Changuni Lonete, thereby occasioning him actual bodily harm.
3. The appellant denied the charge in the Lower Court. The case proceeded for hearing with the prosecution calling 7 witnesses. The appellant was placed on his defence. He gave unsworn statement.
4. By Judgment delivered on 21st August 2019, the appellant was sentenced to 7 years imprisonment for count I and 3 years imprisonment in respect to count II. The trial Magistrate ordered that the two sentences run con-currently.
5. The Appellant being dissatisfied/aggrieved by conviction and sentence, filed this appeal. When the appeal come up for hearing on 18th July 2023, the appellant informed the court that his prayer was for the sentence to be reduced. He said that he is due to complete his sentence on 21st April 2014.



6. The court sought social inquiry report which was filed on 25th July 2023. On 25th July 2023 when the mother came up for mention, the appellant stated that he has served 4 years in prison and he is 1^{1/2} years to complete sentence.
7. The Appellant said he has been unwell in prison and was not able to enroll for any training. He has prayed for his defence to be reduced. The state counsel Ms Ratemo submitted that she has accused Social Inquiry Report and note that the Probation Officer recommends community service order and the state is not opposed to that.
8. I have perused Social Inquiry Report and note that the appellant's family is willing to accept the appellant back and assist him to re-integrate back to the society. The Local Administration are not opposed to the appellant being released to complete the remainder of the sentence in the community and recommend that he be placed at Loruk Police Station. The Probation Officer indicate that although the victims oppose release of the appellant, the appellant has reformed and is of poor health.
9. I have considered sentiments of the accused's family, local administration and victims. From the social inquiry report, the appellant has been rehabilitated; he has reformed. I take note of his ill-health and I am of the view that it will be in the interest of Justice to allow him serve the remaining sentence within the community.
10. Final Orders: -
 1. Appellant is placed on community service for the remaining of his sentence.
 2. Appellant to serve Community Service Order at Loruk Police Station.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET

THIS 26TH DAY OF JULY 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Ms Ratemo for state.

Accused present

