



REPUBLIC OF KENYA



**Mwangi v Republic (Criminal Appeal 47 of 2018)
[2023] KEHC 26707 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL APPEAL 47 OF 2018
CM KARIUKI, J
DECEMBER 20, 2023**

BETWEEN

JOHN KAMAU MWANGI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the Judgment of Honourable O. Momanyi Senior
Resident Magistrate delivered on 8th AUGUST, 2016 in the
Chief Magistrate Court at Nyabururu SOA No. 43 of 2018)*

JUDGMENT

1. The appellant was charged with an offence of defilement in which he was convicted and sentenced to life imprisonment after pleading guilty after being warned by court of consequences of the plea being aggrieved with the conviction and sentence, he lodged instant appeal via petition where in his grounds complained for:
 - i. That the age of the child was not established to be 14 years
 - ii. That he was not warned of the consequences for pleading guilty.
2. He was convicted and later sentenced on 8/8/2016 to life imprisonment.
3. He seeks retrial. The parties were directed to file submission to canvass the appeal.
4. Appellant relied on his ground of appeal as captured above.

Respondent Submissions

5. The Appellant was charged with the offence of Defilement Contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No. 3 of 2006.



6. Particulars are that on the 21st day of April 2018 in Subukia Sub-County within Nakuru County intentionally caused his genital organ (penis) to { penetrate the genital organ (vagina) of MM a child aged 14 years.
7. When the case came up for plea on 23/04/2018, the substance of the charge and every element thereof was stated by the court to the accused person in the language that he understands who being asked whether he admits or denies the truth of the charge replied that it was fine.
8. The Magistrate then proceeded to warn the accused/appellant whether he was sure of the admissions and the case was adjourned to 24/04/2018 when the accused pleaded not guilty after the charge was again read over to him and hence the case was allocated to another court with a mention on 30/04/2018 to fix a hearing date.
9. When the matter came up for mention on 7/5/2018, the accused sought to have the charge again read to him to which charge he pleaded guilty to. And the court again warned him in view of the seriousness of the charge and the penalty it carries.
10. Facts were later read over to him that on 21/04/2018 at around 8:00 am, the complainant a former student at [Particulars Withheld] Secondary School left her home to attend a youth Seminar at Subukia . She walking on a path through the forest to the [Particulars Withheld]. She met a man who was walking towards Subukia. The man stopped her. He threatened her not to make any noise.
11. He pulled out a knife pointed at her, picked a stone and threatened he telling her not to make any noise. He pushed her down. He put a stone in the mouth of the complainant.
12. He unzipped his trouser, he took off his pant while holding the knife at her. He took off her clothes. He put his penis in her vagina. She was fighting back. He defiled her twenty (20) minutes. She managed to run and th accused shouted at her that she remains silent otherwise he will kill her.
13. She met a man in a nearby farm. They found a motor bike and tried to look for the accused. Shortly they met the accused. This was shortly after complainant had escaped. He still had a knife. They disarmed him He was still at the forest. They arrested him. The police and grandmother came and arrested him. Complainant was escorted to hospital. She was heavily bleeding. At Subukia Sub-County Hospital P 3 form was filled and confirmed: -Several bruises.Severe bleeding.bruises on the vagina.
14. The following documents were then produced as exhibits namely: -Exhibit 1 (a) Treatment notes.
(b) P3 form
b) Exhibit 2 - Knife that was.....c) Exhibit 3 (a) Birth certificate copy confirmed by court.
(b) Date of birth 26/06/2003.Clothes — Exhibit 4.Photos of the scene — Exhibit 5(a-d).Pink pant blood stained — Exhibit 6.Grey sweater blood stained — Exhibit 7.
15. After completion of reading of the aforementioned facts, the appellant stated that it was true.
16. Before sentencing, the court did call for the appellants previous records and the state indicated that the appellant had previously been charged with the offence of assault vide criminal No. 285/2015 and imprisoned for three (3) years without an option of fine and was released on 20/04/2018 and committed the offence of defilement on 21/04/2018 being one day after his release.
17. The court then considered the nature the offence as aggravating facts read and the mitigation offered and sentenced the appellant to life imprisonment.



18. The Appellant being dissatisfied with the whole of the said judgment filed his Petition of Appeal on 19.06.2018 where he has enumerated five (5) grounds of appeal, which appeal is opposed to its entirety.
19. To start with, since the conviction and sentence of the Appellant arises from his plea of guilty, Section 348 of the Criminal Procedure Code bars appeals from subordinate courts where an accused was convicted upon a plea of guilty except on the extent and legality of sentence by providing that: -
 - i. No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent and legality of the sentence.
20. If the case of Olel-V- Republic (1989) KLR 444, it was held that:

“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the Criminal Procedure Code (Cap 75) does not merely limit the right of appeal in such cases but bars it completely”.
21. Respondent thus submit that the manner in which the plea was taken in this case was proper pursuant to Section 207(1) and (2) of the Criminal Procedure Code, and the manner of recording a plea of guilty was properly done as laid down in the case of Adan -V-Republic [1973] EA 445 being a decision by the Court of Appeal.
22. At first, the appellant pleaded guilty to the charge and the Trial Magistrate warned him as indicated on Page 1 of the proceedings, and later when the matter was fixed for reading of facts, the charge again was read to him and he changed plea to that of not guilty. Later on, he again sought to be read over the charge afresh to which he pleaded guilty. The trial magistrate warned him of the consequences but he stated that I know. I still admit.
23. The court had no otherwise but to enter a plea of guilty. The court again proceeded to warn the appellant that the charge was a felony and the appellant responded that he knew and still accept the charges.
24. Facts were then read and among the facts, a birth certificate was produced as Exhibit 3 showing that the complainant was born on 26/06/2003 which means she was aged 14 years 10 months when the offence occurred. Similarly, among other exhibits produced, there were treatment notes and a P3 form which clearly proved that the offence of defilement took place. Blood-stained clothes were also produced and the facts pointed out to a very brutal defilement ordeal which the complainant went through.
25. Similarly, the appellant stated that the facts are correct and the court rightly convicted him. Respondent thus submit that the legal laid down procedures as to the recording a plea of guilty were followed and the court ought not be faulted.
26. On the legality of the sentence of life imprisonment which was granted to the appellant.
27. The punishment as stipulated Under Section 8(3) of the Sexual Offences Act provides for a minimum sentence of twenty (20) years, but the facts and circumstances like the brutality inflicted on the complainant, and also the fact that the appellant had just left prison a day before the incident after having served three (3) years imprisonment persuaded the Hon. Magistrate to hand him a life which thus respondent- urge the court not to interfere with sentence.
28. In the upshot respondent urge the court to dismiss the appeal in its entirety.



Issues, Analysis and Determination

29. The court having gone through the record finds the issues raised by the appellant are: That the age of the child was not established to be 14 years. That he was not warned of the consequences for pleading guilty. Thus, He seeks retrial. The court classifies the issues as whether the plea taking complied with the law? Was age of the victim established?
30. To start with, since the conviction and sentence of the Appellant arises from his plea of guilty, Section 348 of the *Criminal Procedure Code* bars appeals from subordinate courts where an accused was convicted upon a plea of guilty except on the extent and legality of sentence by providing that: -
- No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent and legality of the sentence.
- a. If the case of *Olel-V- Republic* (1989) KLR 444, it was held that:
- “Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the Criminal Procedure Code (Cap 75) does not merely limit the right of appeal in such cases but bars it completely”.
31. The question then, is was the manner in which the plea was taken in this case proper pursuant to Section 207(1) and (2) of the *Criminal Procedure Code*? The manner of recording a plea of guilty was laid down in the case of *Adan v Republic* [1973] EA 445 by a decision of the Court of Appeal. When an accused person pleads guilty to an offence, the trial court warns him of the consequences.
32. In the instant case, at first, the appellant pleaded guilty to the charge and the Trial Magistrate warned him as indicated on Page 1 of the proceedings, and later when the matter was fixed for reading of facts, the charge again was read to him and he changed plea to that of not guilty. Later on, he again sought to be read over the charge afresh to which he pleaded guilty. The trial magistrate warned him of the consequences but he stated that “I know. I still admit”.
33. The court had no otherwise but to enter a plea of guilty. The court again proceeded to warn the appellant that the charge was a felony and the appellant responded that he knew and still accept the charges.
34. Facts were then read and among the facts, a birth certificate was produced as Exhibit 3 showing that the complainant was born on 26/06/2003 which means she was aged 14 years 10 months when the offence occurred. Similarly, among other exhibits produced, there were treatment notes and a P3 form which clearly proved that the offence of defilement took place. Blood-stained clothes were also produced and the facts pointed out to a very brutal defilement ordeal which the complainant went through.
35. Similarly, the appellant stated that the facts are correct and the court consequently, convicted him. The court therefore finds that, the legal laid down procedures as to the recording a plea of guilty were followed and the trial court ought not be faulted.
36. Under Section 348 of the *Criminal Procedure Code* as the provision bars appeals from subordinate courts where an accused was convicted upon a plea of guilty except on the extent and legality of sentence, this court finds the appeal on conviction unmerited.

As to whether sentence was excess, the same has not been raised as a ground nor has appellant sought re-sentencing. However Criminal Appeal No 22 of 2018 of *Evans Nyamari Ayako Vs Republic* The court of the appeal sitting in Kisumu



On 8.12.2023, held “On our part, considering this comparative jurisprudence and the prevailing socio-economic conditions in Kenya, we come to the considered conclusion that life imprisonment in Kenya does not mean the natural life of the convict. Instead, we now hold, life imprisonment translates to thirty years’ imprisonment.

37. Thus, the court makes the following orders;

- i. The appeal on conviction is dismissed, and is confirmed and on sentence, same is substituted with a sentence of 30 years imprisonment to run from the date of conviction in the trial court.

DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 20TH DAY OF DECEMBER, 2023.

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C KARIUKI

JUDGE

