



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO. E002 OF 2020

LEAKEY WAFULA NGUTUKU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement and sentence of Hon. J. Kingori, CM, dated 4th December, 2020 in the CM's

Court at Bungoma, in Criminal No.1748 of 2016, Republic vs Leakey Wafula Ngutuku)

JUDGEMENT

In his petition of appeal the appellant has appealed against his conviction and sentence of eighteen (18) years imprisonment in respect of the offence of defilement contrary to section 8(1) as read with section 8 (4) of the Sexual Offences Act No. 3 of 2006.

In this court the appellant has raised seven grounds of appeal in his petition of appeal.

It is important to point out that I had dismissed the appellant's appeal against conviction but I allowed his appeal against sentence and proceeded to quash the sentence dated 17th March 2020; which was delivered on my behalf by Riechi, J on 27th October 2020. I directed that the appellant be re-sentenced by the lower court. It therefore follows that this appeal is only against sentence.

Following a re-sentencing hearing by the lower court, the appellant was re-sentenced to 18 years imprisonment; although the prescribed minimum sentence is 15 years imprisonment.

In ground 2 the appellant has faulted the trial court for imposing upon him an excessive and harsh sentence of 18 years imprisonment. He has submitted that the dental formula should have been used to determine the age of the complainant. This submission is irrelevant as it goes to the issue of conviction which is not before this court. I hereby dismiss it for being irrelevant.

In re-sentencing the appellant the trial court considered the following factors. The plea of the appellant was that he was discharged. That court appreciated that it had discretion to impose the prescribed statutory minimum sentence of 15 years on the basis of the principles set out in Francis Muruatetu & Another (2017) e-KLR. That court found the following aggravating factors which called for an enhanced sentence. The appellant was a married person who defiled the victim in a most brutal way. The appellant threw the victim into a ditch by the road side that was wet when the victim was going to school in the morning.

Additionally, the appellant threatened her with a knife, if she refused to sleep with him. Following the brutal defilement the victim dropped out of school and lost her virginity. She is devastated and traumatized and she will not forgive the appellant. She is not even living in her house 4 years after the incident due to fear.

The court concluded that having regard to the victim impact statement as recorded by the probation officer the appellant deserved a higher sentence. It then imposed a sentence of 18 years imprisonment to run from the date he was sentenced.

I have re-evaluated the factors considered by the trial court in sentencing the appellant and I find that it acted upon the correct principles. I therefore find no basis to interfere with the sentence imposed.

In the premises, the appellant's appeal fails and is hereby dismissed in its entirety.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDE VIDEO CONFERENCE THIS 28TH DAY OF JANUARY 2022.

J M BWONWONG'A

JUDGE

In the presence of:-

Mr. Kinyua court assistant

The appellant in person

Mr. Ayekha for the Respondent