



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO 54 OF 2019

CHRISPINUS WANYAMA JUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement (conviction and sentence) of Hon. C. L., Adisa, RM, dated 9th May 2019 in the Chief Magistrate's Court at Bungoma in S.O. Criminal Case No. 50 of 2018, Republic v Chrispinus Wanyama Juma)

JUDGEMENT

The appellant has appealed against conviction and his sentence of ten years imprisonment in respect of attempted defilement contrary to section 9 (2) of the Sexual Offences Act No.3 of 2006.

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

Following his conviction for the offence of attempted defilement the appellant was sentenced to the minimum mandatory sentence of ten years imprisonment.

In his petition of appeal, the appellant has faulted the trial court for imposing an excessively harsh sentence upon him. He has also mitigated in stating that he has achieved skills and experience for workmanship that will enable him to earn a living and contribute to the economy and to bring up his family. He has also expressed being very remorseful.

In his submission the appellant has submitted that he is epileptic and the prison conditions have made it worse. He has therefore urged the court to be lenient.

The respondent has supported the sentence imposed as it is the minimum sentence prescribed by law.

In sentencing the appellant, the trial court took into account that the appellant was a first offender and that the sentence was the minimum sentence prescribed by law.

It is clear that the trial court did not take into account the period that the appellant had been in pre-trial custody. This is an error of law that entitles this court to interfere with the sentencing discretion of the trial court. The appellant was arrested on 10th June 2018 and was in pre-trial custody to the date when he was sentenced on 9th May 2019, which translates to a period of about one year and one month. Section 333 (2) Criminal Procedure Code (Cap 75) Laws of Kenya required the trial court to take into account that period of pre-trial custody in sentencing the appellant.

In addition, the appellant has been in post judgement custody since 5th May 2019, when he was sentenced to ten years imprisonment; which translates to a period of about two years and two months.

The appellant was in pre-trial custody for one year and one month and two years and two months in post judgement custody; which translates to a total of three years and three months.

It should always be borne in mind that where the sentence to be imposed is the prescribed statutory minimum sentence, the pre-trial and post-trial periods must be taken into account. This is intended to avoid subjecting the appellant to double punishment, which is constitutionally impermissible in terms of article 50 (2) (o) of the 2010 Constitution of Kenya. This principle which is known as the rule against double jeopardy is also recognized and embodied in section 138 of the Criminal Procedure Code.

It therefore follows that the appellant will now serve six years and nine months in prison (being 10 years less three years and three months); which will begin to run from the date of this judgement.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE THIS 24TH DAY OF FEBRUARY 2022.

J M BWONWONG'A

JUDGE

IN THE PRESENCE OF:-

MR. KINYUA: COURT ASSISTANT

THE APPELLANT – PRESENT IN PRISON

MS MUKANGU FOR THE RESPONDENT