



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL APPEAL NO 38 OF 2019

BARNABAS TAALAM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon S.O. TEMU, PM, dated 20th December 2017

in S.O. Criminal Case No 25 of 2017 in the Senior Principal Magistrate's Court

at Kabarnet, Republic v Barnabas Taalam)

JUDGMENT

In his petition to this court the appellant has challenged both his conviction and sentence of five years' imprisonment in respect of the offence of attempted rape contrary to section 4 of the Sexual Offences Act No. 3 of 2006.

During oral hearing in this court the appellant appeared to have abandoned his appeal against conviction. He only submitted on sentence; in respect of which he urged the court to release him since he was due to be released in two months' time; having served most of his term of imprisonment. Additionally, he urged the court to take into account the period he has been in custody in considering his appeal as regards sentence.

Mr. Mong'are for the respondent supported the sentence arguing that it was not excessive in the circumstances of the case.

I have considered the submissions of the appellant. As a first appeal court I am required to re-evaluate the sentence imposed and make my own findings in that regard.

I find that in sentencing the appellant the trial court imposed the prescribed statutory minimum sentence of imprisonment of five years. Following the Supreme Court decision in *Francis Muruatetu & Another V. Republic [2017] e-KLR*, courts are no longer bound to sentence an accused to the minimum prescribed statutory sentence.

Furthermore, I find that the appellant was in pre-trial remand custody from 25/9/2017 to 20/12/2017, which translates to about three months. The appellant has also been in prison custody since 20/12/2017 to date, which translates to slightly over three years. The court is bound to take these periods into account as mandatorily required of it by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.

In the light of the foregoing, I find that the sentence imposed is manifestly excessive.

In the premises, the appellant's appeal succeeds with the result that the sentence imposed is reduced to that he has served and is hereby ordered released forthwith unless held on other lawful warrants.

Judgment dated, signed and delivered in open court at Kabarnet this 27th day of January 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Kemboi Court Assistant.

Appellant present in person.

Mr. Mong'are for Respondent.