



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO.30 OF 2018

(Appeal Originating from Nyahururu CM’s Court Cr.No.2257 of 2013 by: Hon. A.P. Ndege – S.R.M.)

DAVID MBATIA MUTISO.....APPELLANT

- V E R S U S -

REPUBLIC.....RESPONDENT

J U D G M E N T

David Mbatia Mutiso the appellant was convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act.

The particulars of the charge are that on 17/10/2013 in Laikipia County, intentionally and unlawfully caused his penis to penetrate the vagina of RNN a child aged 15 years.

In the alternative, he faced a charge of committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act.

The appellant pleaded guilty to the principal charge and was sentenced to serve 15 years imprisonment.

The appellant has only appealed against sentence. In his petition of appeal, he contends that he pleaded guilty and did not waste the court’s time; that the sentence of 15 years was excessive and so far, he has served 5 years; that he has been counseled and rehabilitated, is God fearing and has studied Theological Education by Extension and graduated with a Diploma in the same; that he has acquired a Certificate in business, a training which is undertaken by STRIDE an NGO working among rehabilitated offenders; that he has acquired Government trade test I and II in Carpentry and Joinery. He has acquired Grade I and II in Vehicle Mechanics. The appellant produced the said certificates in court. He also produced in court a certificate of commendation for promotion to Trustee from the Regional Commander Central Region one Charles Ndung’u SSP.

Ms. Rugut, Learned Counsel for the State opposed the appeal contending that the appellant defiled a 15 year old child claiming that he had married her; that the sentence of 15 years is lawful and that even if he is rehabilitated and has done courses in various fields, he has to serve the sentence as a deterrent measure.

I have considered the grounds of appeal. Indeed the appellant pleaded guilty to the charge and the court did not need to go through the rigorous process of hearing witnesses and writing a judgment. He saved the court’s very precious time. The appellant was found to be a first offender and asked for forgiveness.

The appellant was charged under Section 8(1) as read with Section 8(3) of the Sexual Offences Act. The complainant was 15 years old and upon conviction, the appellant should have been sentenced to imprisonment for a term of not less than twenty years. I believe the court exercised its discretion and sentenced him to 15 years imprisonment instead.

I have taken into account the fact that the appellant has under taken several courses which will help him when he leaves prison. I have also seen certificates indicating that he is now a Christian and the prison has recognized him good conduct and given him a higher status in prison because of his good conduct.

Having considered all the above factors, I find the appellant has demonstrated a remarkable turnaround in his character, the court will exercise its discretion, set aside the sentence of 15 years. Instead the appellant will be sentenced to serve a term of 8 years imprisonment.

The prison sentence will be effective from the date of sentence on 23/12/2013. The appeal succeeds to that extent.

Dated, Signed and Delivered at NYAHURURU this 27th day of February, 2020.

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R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut – Prosecutor

Eric – Court Assistant

Appellant - present