



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: A.K NDUNG'U J.

CRIMINAL APPEAL NO. 77 OF 2019

KENNEDY OCHIENG'APPELLANT

VERSUS

REPUBLIC through ODPP.....RESPONDENT

(An appeal from the conviction and sentence of Hon. R. Oanda, PM dated and delivered on the 29th July 2019 in the original Kilgoris PMCR No. 361 of 2017)

JUDGEMENT

1. The appellant was tried and convicted in Criminal Case No. 361 of 2017 at Kilgoris PM's Court and sentenced to 15 years for the offence of incest contrary to **Section 20(1)** of the **Sexual Offences Act No. 3 of 2006**.
2. Vide his petition of appeal to this court; the appellant challenged the conviction and sentence. He asserts that the trial court was not aware that the complainant was his brother's daughter and that there had been a long standing land dispute with the parents which led to his being framed.
3. He seeks reduction of sentence stating that he is remorseful and that he is a breadwinner for his family.
4. At the hearing, the appellant abandoned his appeal on conviction and pressed his appeal on reduction of the sentence imposed.
5. Mr. Otieno for the DPP noted that the maximum sentence for the offence is life imprisonment. He considered a 15 year term as a proper sentence. He, however, urged the court to consider the appellant's plea.
6. I have considered the nature of the offence and the sentence imposed by the trial court. Section 20(1) of the Sexual Offences Act provides;

“S 20 (1) Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years:

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.”

7. The record shows that the trial magistrate exercised discretion in sentencing when he meted out a sentence of 15 years, a clear indication that the trial court was alive to the principle in **Muruatetu Case**.
8. In those circumstances, therefore, I find no good ground upon which to interfere with the sentence passed. The sentence is lenient. The appeal herein is dismissed.

Dated and delivered at Kisii this 25th day of February, 2020.

A.K NDUNG'U

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Applicant in person.