



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: A.K NDUNG'U J.

CRIMINAL APPEAL NO. 6 OF 2020

WESLEY KIPRONO LANGAT.....APPELLANT

VERSUS

REPUBLIC through ODPP.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. R.M Oanda – PM dated 25th March, 2019 at the Principal Magistrate’s Court at Kilgoris in Criminal (Sexual Offences) Case No. 18 of 2018)

JUDGMENT

1. The appellant was charged before the Principal Magistrate at Kilgoris with the offence of Rape contrary to **Section 3(1)(a)(3) of the Sexual Offences Act No.3 of 2006**. The particulars of which were that on the 30.4.2018 in Transmara East sub County within Narok County, intentionally and unlawfully caused his penis to penetrate the vagina of NC aged 19 years by use of threats.
2. In a judgement dated and delivered on 25.3.2019, the appellant was found guilty and convicted for the offence of rape and sentenced to 10 years imprisonment.
3. Aggrieved by the sentence, the appellant in a petition of appeal filed on 10.1.2020 sought to have the sentence reviewed from 10 years to a non-custodial sentence. He pleads remorse and asks the court to consider his mitigation.
4. The court sought and received a pre-sentence inquiry report from the probation office. This was informed by the fact that though the sentence herein was legal, the trial court appears to have shackled itself with the mandatory nature of the sentence provided under **Section 3(3) of the Sexual Offences Act** which provides;

“S 3(3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.”
5. The mandatoriness of the sentence herein has since been relaxed following the decision in **Francis Karioko Muruatetu –vs- Republic**. The court thus retains the discretion to mete out the appropriate sentence based on the circumstances of each case.
6. In his mitigation, the appellant stated that he had been in court for long. He had children who depended on him. His parents separated. The court indicated that it had considered his mitigation and sentenced him to 10 years imprisonment.
7. From the record, I note the appellant did his trial while in custody for a period close to an year. The probation report presented indicates that the appellant is known to be humble and that the home environment is conducive for his rehabilitation. He has very good community ties. His family is willing to have him back home and assist in the rehabilitation process as he continues his boda boda business. The local administration attests to the fact that the appellant was a good person before the incident and they have no records on him. He is 29 years old. The probation office finds him suitable for a non-custodial sentence.
8. I have considered the foregoing. I note that the offence herein is a serious one. It certainly left a permanent scar on the victim. Notably, the victim was not interviewed. On the other hand, I note the appellant is a 1st offender with a good past record.
9. In my finding, I am satisfied that there exists sufficient ground to interfere with the sentence meted out by the trial court for the court bound itself to the mandatory sentence. I am, however, after considering the suitable punishment for the offence herein, unable to accept the recommendation for a probation sentence for the appellant. This is after factoring the nature of the offence and the impact on the victim and society at large. There is a serious need to employ a deterrent sentence.

10. Noting the circumstances of the offender and his palpable remorse, I am satisfied that a sentence of 5 years imprisonment will meet the justice of the case for retribution and deterrence of the appellant and of others with similar inclinations.

11. With the result that I set aside the sentence of 10 years imprisonment imposed by the trial court and substitute thereof a term of 5 years imprisonment to run from the date of the judgement of the trial court.

Dated, Signed and delivered at Kisii this 30th day of July 2020.

A.K NDUNG’U

JUDGE