



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL APPEAL NO. 201 OF 2017

NICHOLAS LOKWONY.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court

at Kabarnet Cr. Case no 836 of 2016 delivered on the 11th day of December, 2016 by Hon. S.O. Temu PM]

JUDGMENT

1. The appellant who was convicted and sentenced to imprisonment for 5 years for attempted rape contrary to section 4 of the Sexual Offences Act appeals from the sentence and offers, what he calls, “*mitigation on the sentence*”, seeking a non-custodial sentence.
2. The appellant was in pre-trial detention since 3/10/16 awaiting his trial which concluded with the Judgment and conviction on 20/12/16.
3. The prosecution’s evidence by the complainant (Pw1) and the witness Pw2 who went to rescue her and found her struggling with the appellant with her blouse off, and the appellant’s subsequent arrest by the complainant’s father and the police on being alerted by Pw2 when the appellant went for the Mkopa items he had left behind while fleeing the scene, when weighed against the appellant’s unsworn statement is overwhelming. There is no doubt as to the offence as the witness Pw2 confirmed the struggle between the complainant and the appellant which had left the former without her blouse with only a bra, as the appellant attempted to rape her.
4. The imprisonment for 5 years is a mandatory minimum sentence under section 4 of the Sexual Offences Act and the only discrepancy is the failure by the trial Court to consider the 2 month pre-trial detention of the appellant.

Orders

5. Accordingly, for the reasons set out above, the Court while upholding the conviction of the appellant for attempted rape contrary to section 4 of the Sexual Offences Act, finds no merit in the appeal from the sentence, which is a mandatory minimum sentence.
6. There shall, however, be an order for computation of the period of imprisonment for 5 years from 19/6/2016, the date of his arrest and detention in custody awaiting trial.

Order accordingly.

DATED AND DELIVERED THIS 29TH DAY OF JANUARY 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

