



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CRIMINAL APPEAL NO. 07 OF 2018**

**JAMES ARAP CHEMOR ALIAS KOECH.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

**at Kabarnet Cr. Case no. 19 of 2017 delivered on the 15<sup>th</sup> day of January, 2018**

**by Hon. N.M. Idagwa, RM]**

**JUDGMENT**

1. The appellant was convicted and sentenced to imprisonment for ten (10) years for the offence of rape contrary to section 3(1) (3) of the Sexual Offences Act on 15/1/2018.
2. At the hearing of the appeal, the appellant informed the Court that the complainant with the facilitation of the family and the village members had discussed the matter and agreed to forgive the appellant.
3. The DPP did not oppose the process if the complainant was willing to forgive the appellant, having received a letter dated 29/4/18 in which the Assistant Chief, Koibarak Sub-Location had confirm that there was a meeting of both the families of the complainant and the appellant and it had agreed to forgive the appellant.
4. The Court considered that being an adult complainant in a charge of rape, the complainant may be allowed to withdraw the complaint or forgive the appellant and it was the duty of the Court under Article 159 to promote Alternative Dispute Resolution Mechanism of reconciliation in the context of the rape charge, even as I have held in recent cases at the appellate level. I heard the complainant on Oath confirm the meeting between the two families and of her willingness to forgive the appellant.
5. The position would, of course, have been different in cases of defilement where the complainants are of lower than the age of consent and incapable, therefore, of consenting to any sexual intercourse or of forgiving the act as any such consent or forgiveness would be that of their guardians rather than of their own volition.

**Orders**

6. Accordingly, having noted the agreement of the adult complainant to forgive the appellant in the rape charge and the no-objection by the DPP who is the custodian of the State's Prosecutorial Powers and further considering the benefit of social harmony and peace between the two families of the complainant and the appellant as evidenced by their settlement meeting, I allow the matter to be terminated on the basis of the agreement by the complainant to forgive the appellant.
7. While the appellant was properly convicted of rape contrary to section 3 (1) (3) of the Sexual Offences Act, the Court allows the termination of the matter on the basis of the agreement to reconciliation pursuant to Article 159 (2) (c) of the Constitution.
8. The appellant shall, therefore, be released from custody unless he is otherwise lawful held.

*Order accordingly.*

**DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF APRIL 2019**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent.