



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CRIMINAL APPEAL NO. 30 OF 2019

DENNIS MABOI MABEYA.....APPELLANT

-VRS-

THE REPUBLIC.....RESPONDENT

{Being an appeal against the Judgement of Hon. C. W. Waswa – RM Nyamira dated and delivered on the 10th day of May 2019 in the original Nyamira Chief Magistrate’s Court Sexual Offence No. 4 of 2019}

JUDGEMENT

The appellant in this case is serving a term of five (5) years imprisonment for the offence of attempted rape contrary to Section 4 of the Sexual Offences Act.

The particulars of the charge were that on 10th January 2019 at Morako Sub-location in Manga Sub-county within Nyamira County, he intentionally and unlawfully attempted to cause his penis to penetrate the vagina of EMA without her consent.

This appeal is against the sentence only, and is premised on the following grounds: -

“1. That I was sentenced to 5 years imprisonment.

2. That the sentence imposed on me is manifestly harsh and in excessive I do pray for probation to alternatively sentence reduction.

3. That I am the sole breadwinner in my family siblings and my parents depend on me fully to cater to their needs hence I pray for probation or reduction of the sentence review so that I can access the opportunity to assist my dependants who are adversely suffering in my absence.

4. That the trial magistrate in lower court erred in law and facts by not considering my mitigation before he passed out the sentence of 5 years imprisonment.

5. That the appeal is under mitigation and probation basis.

6. That I urge this honourable court to make its own conclusion and give a reduction of the sentence.”

At the hearing of the appeal the appellant relied on written submissions in which he admitted he committed the offence but expressed remorse and urged this court to note that he had reformed. He undertook not to re-offend and urged this court to substitute the sentence with a non-custodial one.

This was vehemently opposed. Mr. Majale, Learned Prosecution Counsel submitted that the appellant was sentenced to the minimum sentence provided by the law after considering his mitigation. He submitted that the trial Magistrate also addressed his mind to the Judiciary Sentencing Policy and the sentence was therefore proper. He urged this court to uphold it. I have considered the evidence adduced in the trial court and the submissions in this appeal carefully. It is my finding that the sentence imposed by the trial court is neither harsh nor excessive.

The punishment prescribed for attempted rape is a sentence of imprisonment for not less than five years but which may be enhanced to imprisonment for life. In arriving at the sentence of imprisonment for five years the trial Magistrate considered the appellant’s mitigation

and antecedents; his family life and the fact that he had expressed remorse and promised not to re-offend. Indeed, the trial Magistrate called for a pre-sentence report and also addressed his mind to the objectives of sentencing. It is my finding therefore that the sentence was well thought as the trial Magistrate took all factors into consideration. I am also satisfied that it fits the crime. Moreover, the appellant had served barely one month of that sentence when he petitioned this court to set it aside. That does not bespeak a person who knows what he did was wrong and feels sorry for it. Rather, it bespeaks a person who merely wishes to get away with what he did. The appeal has no merit and it is dismissed.

Signed, dated and delivered in Nyamira this 28th day of November 2019.

E. N. MAINA

JUDGE