



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYAHURURU
CRIMINAL APPEAL NO.11 OF 2018

(Appeal Originating from Nyahururu CM's Court Cr.No.1280 of 2015

by: Hon. V. Ochanda –R.M.)

JOSEPH OMONDI OJWANG.....APPELLANT

- V E R S U S -

REPUBLIC.....RESPONDENT

J U D G M E N T

This appeal arises from the judgment of Hon. Ochanda, R.M., read by Hon. Wanyanga SRM on 10/1/2018. The appellant **Joseph Omondi Ojwang** was charged with the following offences:

1. Attempted defilement contrary to Section 9(1) as read with Section 9(2) of the Sexual Offences Act.

The particulars of the charge are that on 3/6/2015 in Subukia District, Nakuru County, intentionally and unlawfully attempted to insert his male organ namely penis into the vagina of JWW, a child aged 17 years.

In the alternative he faced a charge of **committing an indecent act contrary to Section 11(1) of Sexual Offences Act. In that he caused his fingers to touch the vagina of JWW, a girl aged 17 years.**

2. The appellant also faced a charge of sexual assault contrary to Section 5(1)(b) as read with Section 5(2) of the Sexual Offences Act.

The particulars of the charge are that on 3/6/2015 at [Particulars Withheld] Farm, intentionally and unlawfully caused his fingers to penetrate the vagina of FMK, a child aged 16 years old.

He also faced an alternative charge of **committing an indecent act with a child contrary to Section 11(1) of the Sexual Offences Act.**

After a full trial, the court found the appellant guilty of assault contrary to Section 251 of the Penal Code in Count I and as regards Count II found the appellant guilty of Sexual Assault contrary Section 5(1) of the Sexual Offences Act.

On Count I, he was sentenced to serve six months imprisonment and Count II, 10 years imprisonment.

The appellant is aggrieved by the sentence and has appealed on the following grounds; that he has learnt carpentry while in prison. He has also learnt how to live with people and regrets his actions and is remorseful. He prays that the court reduce the sentence.

Learned counsel for the State, Ms. Rugut, opposed the appeal on grounds that the 2nd count actually carries a sentence of life imprisonment upon conviction but the appellant was only sentenced to 10 years imprisonment which is lenient; that the complainant was seriously injured when the appellant inserted his three fingers in her genitalia as a result of which she bled and had to be stitched. Counsel urged the court not to interfere.

I have considered the appeal. The appellant was treated as a first offender, he claims to have reformed from the programs in prison and is also remorseful.

I also take into account the circumstances of the offences, that the appellant early one morning, actually waylaid two school girls and attacked one after the other while armed with a knife. The girls fought back and he ended up seriously injuring one. The acts are barbaric Under Section 5(2) of the Sexual Offences Act, a convicted person is liable to life imprisonment. The appellant got away with a lenient sentence of 10 years on the 2nd count. I think the sentence was lenient and I decline to interfere with the sentence.

The appeal is hereby dismissed.

Dated, Signed and Delivered at NYAHURURU this 25th day of November, 2019.

.....

R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut for the State

Soi – Court Assistant

Appellant - present