



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL APPEAL NO. 37 OF 2018

CALEB ODUOR OBONGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against conviction and sentence from original Siaya Principal Magistrate's Court

Criminal Case No. 40 of 2017 dated 8.8.2018 before Hon. J.O. Ong'ondo – Principal Magistrate)

RESENTENCING

1. On 4.12.2019 this Court delivered judgment in this appeal, dismissing the appellant's appeal against conviction and reserving sentence to be considered after a social inquiry report is filed on the appellant's antecedents.
2. I have now received a Social Inquiry Report on the appellant herein **Caleb Oduor Obongo** as filed this morning 19.12.2019 by the Siaya Probation Officer Mr. David O. Odumba and signed by him. The report points the appellant as a well behaved disciplined person who was at the material time of the offence working as a vehicle body building mechanic and who was supporting his family and siblings with fees. He was married and supporting his wife in college with fees. He has no child with her. That she has since gone back to her parents' home due to lack of support.
3. The victim of the offence was a 16 year old child who has since sat her K.C.S.E. this year and she and her mother were interviewed by the Probation Officer. They are forgiving.
4. The community from which the appellant and victim live are concerned that a youthful life is being wasted away in prison at the taxpayer's expense, the appellant is remorseful and prays for leniency of the Court.
5. I have considered all the above mitigations by the appellant and the Social Inquiry Report. The offence with which the appellant was charged and convicted is serious and traumatizing to victims and it is for that reason that the legislature enacted the Sexual Offences Act and provided for minimum Mandatory sentences with a view to deterring the would be offenders. However, there is no evidence that the harsher the punishment, the likely the offence is unlikely to be committed in the society or community. Each case must be treated individually as circumstances of each case are unique and whereas some offenders are likely to learn lessons after being punished, others become worse.
6. It is for that reason that the Court of Appeal in **Jared Koita Injiri v Republic [2019]eKLR** found it appropriate to interpret the Sexual Offences Act, applying the principles enunciated in **Francis Karioko Muruatetu & Others v Republic SC Pet Nos.15 and 16 of 2015** and held *inter alia*, that the Mandatoriness of Minimum prison terms is unconstitutional for reasons that such law deprived the accused person of the opportunity to mitigate for the trial Court to consider appropriate sentence to be meted out. Secondly, that such mandatory provisions of the law also deprived the trial Courts of the inherent judicial discretion in meting out sentences commensurate with the offence.
7. This Court is aware and takes Judicial Notice of the fact that Sexual Offences traumatize the victims most of whom live with permanent psychological scars. Therefore, taking into account all the factors above and the seriousness of the offences and mitigation by and on behalf of the appellant, and emphasizing the need for citizens to be law abiding and to respect the dignity of their fellow human beings, I exercise discretion and resentence the appellant to serve five (5) years imprisonment to be calculated from the date of his arrest on 11.12.2017.
8. Orders accordingly.

Dated, Signed and Delivered at Siaya this 19th Day of December, 2019

R.E. ABURILI

JUDGE

In the presence of:

Appellant in person

Mr. Okachi Senior Principal Prosecution Counsel

CA: Brenda and Modestar