



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL NO. 41 OF 2016**

**ANTHONY MAINA ..... APPELLANT**

*versus*

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Nanyuki*

*Chief Magistrate's Court Criminal Case No. 2788 of 2009 by Hon. Thripsisa*

*Wanjiku Cherere Chief Magistrate on 21<sup>st</sup> November 2014.)*

**JUDGMENT**

1. **ANTONY MAINA** the appellant herein is convicted of attempted rape contrary to **section 4** of the **Sexual Offences Act**. On being convicted he was sentenced to serve 5 years imprisonment. He has filed this appeal against that sentence. The facts of the case are that the complainant who was a wife and a mother of 3 children was on 16<sup>th</sup> December 2009 walking on the road. It was slightly dark but she was able to recognise the appellant whom she knew and who was following her. The appellant grabbed her and began to strangle her. He hit her on the stomach and on the face. During the trial the complainant was able to show the court the marks of the injuries that she suffered. The appellant then put her on the ground and removed her clothing. The complainant said that by then she was very weak. The appellant raped her but she was unable to scream because he had held her with his hand. When he finished raping her and released her mouth she screamed which screams attracted members of the public who came on the scene and found the appellant still there. The complainant stated in evidence that previously before the offence she used to suffer from depression. The victim impact assessment report presented to court after the conviction of the appellant showed that the rape had adversely affected the complainant. The husband of the complainant stated that her depressive mood were always affected by stress in her life. That the rape had caused her stress and as a consequence the victim's impact report did not have her input because she was unable to communicate with the probation officer. The appellant according to the complainant was an age of her own children. That must have caused her even greater stress.

2. The offence that the appellant committed was no doubt appalling. It was against a wife and mother. It was against a woman who was vulnerable because of her mental state. Sentencing is always at the discretion of the trial court. In this case I am unable to find that the trial court abused that discretion. The sentence of five years meted out to the appellant is the sentence set out under **section 4** of the Sexual Offences Act. It is therefore not excessive. It is for that reason that the appellants appeal is devoid of merit and is dismissed. The trial court's sentence is hereby confirmed.

**DATED and DELIVERED at NANYUKI this 29<sup>th</sup> day of NOVEMBER 2017**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Anthony Maina .....

For the State: .....

Language: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**