



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 116 OF 2015

(Being an appeal arising from conviction and sentence in Sexual offence No 140 of 2015 delivered by V.O. Adet Senior resident Magistrate on 23/10/15)

KHAMALA MISIKO LUBAOAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of **Defilement of a child contrary to Section 8(1) as read with Section 8(2) of the Sexual Offence Act No. 3 of 2016.**

The particulars of the offence were that on the **28th day of July, 2015 in Trans Nzoia County, intentionally caused his penis to penetrate into the vagina of ENB a child aged 9 years.**

2. He was equally charged with the offence of **Committing an Indecent Act with a child Contrary to Section 11(1) of the Sexual Offences Act No. 3 of 20106.**

The particulars of the offence were that on the **28th day of July, 2015 in Trans-Nzoia County, intentionally caused the contact between his genital organ namely penis and the genital organ namely vagina of ENB a child aged 9 years.**

3. The appellant was convicted on his own plea of guilty and sentenced to life imprisonment hence this appeal.

4. In his amended grounds of appeal the appellant has contend that the trial court violated Article 2© and 27(1) of the Constitution; that the trial court violated Section 162 and 163 of the Criminal procedure Code Cap 75 Laws of Kenya and that the court convicted him on evidence of a single witness.

5. I have perused the proceedings by the trial court and it appears clearly that the appellant changed plea immediately after the complainant had testified. He told the court after the complainant testifying that;

‘I do not have questions for the witness. I do admit the charge.’

6. The trial court then proceeded to have the charges read to the appellant and a warning given. Apparently he still pleaded guilty to the charge.

7. The fact were narrated and the exhibits produced appropriately and still he agreed with the same

8. In mitigation he stated;

‘I wish to go back to work. I am 23 years old.’

9. Clearly I do not find any suggestions that the appellant did not understand the facts. Contrary to his grounds of appeal, the conviction was based on his plea of guilty and not on the evidence earlier tendered by the complainant.

10. I have perused the grounds raised by the appellant in particulars Article 25 (c) of the Constitution which talks of fair trial. I do not see where the trial court violated the same. In any case even at the stage when the complainant testified he had a chance of cross-examining her but he chose not. He instead admitted the offence.

11. Article 27(1) of the Constitution on the other hand has to do with equality before the law. Respectfully I do not see how the appellant was discriminated to by the trial court or at all.

12. Section 162 and 163 of the Criminal Procedure Code which deals with soundness of mind of an accused person and the procedure thereof has been heavily relied upon by the appellant. Indeed in his written submissions he has suggested that all through he has been of unsound mind and had been on medication.

13. I do not find any iota of evidence to support the allegations. No medical evidence was produced. Infact at this appeal, there is no application or a suggestion that the appellant suffers from any sickness of the mind.

14. I do concur with the submissions by the learned state counsel that Section 348 of the Criminal procedure Code Suffice herein. The same states that;

‘No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.’

15. In this regard the complainant was 9 years old as found by the dentist. The trial court appropriately handed him a life imprisonment which was the proper sentence.

16. In a nutshell this appeal fails. The appellant an adult took advantage of a 9 year old child and from the doctors notes accompanying the P3 form this was not the first time. The appeal is therefore dismissed.

Delivered, signed and dated at Kitale this 11th day of December, 2017.

H.K. CHEMITEI

JUDGE

11/12/17

In the presene of;

M/S Kakoi for the Respondent

Appellant – present

Court Assistant – Kirong/Silvia

Court: Judgement read in open court.