



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CRIMINAL APPEAL CASE NO. 180 OF 2014

DICKSON AMWAA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being mitigation against the sentence meted upon the appellant by the learned trial magistrate Hon. I. Ruguru, Senior Resident Magistrate in Criminal Case No. 38 of 2013 at Mombasa Chief Magistrate's court).

JUDGMENT

The appellant, Dickson Amwaa was charged with Sexual assault contrary to Section 5 (1) as read with Section 5 (2) of the Sexual Offences Act No 3 of 2006 in count 1.

The particulars were that on the 3rd day of January, 2013 in Kisauni District of the Coast Province, the appellant unlawfully and intentionally caused his finger to penetrate the vagina of EPW, a child aged 3 years.

In the alternative charge, the accused person was charged with indecent act with a child contrary to section 11 (1) of the Sexual Offence Act No 3 of 2006.

The facts being that on the 3rd January, 2013 area in Kisauni District within the Coast Province the appellant unlawfully and intentionally inserted his finger in the vagina of EPW, a girl aged 3 years.

The appellant pleaded not guilty to both charges and the case proceeded for full hearing. Upon such hearing the trial court convicted and sentenced the appellant to serve ten (10) years imprisonment in accordance with Section 5 (2) of the Sexual Offences Act.

On being aggrieved by the sentence, the appellant preferred the appeal. In this appeal dated 22nd July 2014 the appellant set out six (6) grounds of mitigation.

- 1 That he is too remorseful.
- 2 That he begs for leniency despite the offence.
- 3 That he is a 1st offender and a layman in law.
- 4 That he is a family man and his children are languishing in more and more poverty.

5 That he is suffering from ulcers and typhoid.

6 That he promises to be a serious law abiding citizen at all times if acquitted.

He then prayed to the court to consider all these grounds and set aside the sentence or shorten his jail term to enable him join his family.

At the hearing of the appeal, the appellant, who had filed written submissions, added that he had learnt his lesson while in custody and reformed. He also submitted that he had learnt a trade which would go a long way in assisting him in society once released. He prayed for one more chance and promised not to involve himself in things that are not in conformity with society's expectation.

He did not challenge the conviction. He only challenged the sentence meted against him.

Miss Ocholla, the learned state counsel, opposed the appeal against the sentence stating that it was lawful. She submitted that under section 5 (2) of the Sexual Offences Act.

“Any person found liable is supposed to be in prison for a term if not less than 10 years and may be enhanced to a term of life imprisonment.”

She also submitted that the trial magistrate sentenced the appellant to a 10 years imprisonment there having taken into account that he was a 1st offender.

She prayed that the appeal be dismissed.

I have considered the appellants grounds of mitigation in line with the provisions of section 354 (3) (b) (iii) of the Criminal Procedure Code which provides that:

3. (a) The court may then, if it considers that there is no sufficient ground for interfering, dismisses the appeal or hearing.

(b) In an appeal against sentence, increase or decrease the sentence or alter the nature of the sentence.

Section 5 (1) (a) (i) of the Sexual Offences Act under which the appellant is charged provides:

5 (1) Any person who unlawfully;

(a) Penetrates the genital organs of another person with

(i) any part of the body of another or that person.

Section 5 (2) of the Sexual Offences Act, simply states:

“A person guilty of an offence under the section is liable upon conviction to imprisonment for a term of not less than ten years but which may be enhanced to imprisonment for life”.

In the result, the sentence of ten (10) years imposed upon the appellant for the main count is the minimum period provided for by the law for the offence he is charged with.

The sentence is therefore proper and legal and there is no good reason for interfering with it.

I uphold the same and dismiss the appeal.

Judgment dated, signed and delivered on the 22nd day of March, 2016.

D. CHEPKWONY

JUDGE

In the presence of:

M/s Ocholla for the state

The appellant in person

C/Assistance - Kiarie