



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CRIMINAL APPEAL NO.9 OF 2015

JACKSON MWANGI KARIUKI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in criminal case No.19 of 2015 of the Principal Magistrate's Court at Kangema by Hon. J.O Magori – Principal Magistrate)

JUDGMENT

The appellant, **JACKSON MWANGI KARIUKI**, was charged with an offence of defilement contrary to section 8 (1) (3) (sic) of the Sexual Offences Act No. 3 of 2006, in count one. In count two he was charged with the offence of attempted suicide contrary to section 36 of the Penal Code.

The particulars of the offences were that on 6th January 2015 at *[particulars withheld]*, Kahuro District of Murang'a County, intentionally caused his penis to penetrate the vagina of **L.W.M**, a child aged 14 years. On the same day he attempted suicide by taking malathion, a pesticide.

He pleaded guilty on both counts. He was sentenced to twenty years imprisonment in count one and two years in count two. The sentences were ordered to run concurrently.

He now appeals against both conviction and sentence.

The appellant was represented by T.M Njoroge, learned counsel. He raised six grounds of appeal which can be summarized into one as follows:

1. That the learned magistrate erred in law and in fact by failing to ascertain the mental status of the appellant soon after he had attempted suicide.
2. the learned magistrate erred in law and in fact by meting harsh sentence.

The state opposed the appeal through M/s. Joyce Gacheru, the learned counsel.

Briefly the facts of this case are as follows:

After the appellant was arrested for the offence of defilement he was placed in police cells where he attempted suicide. He was taken to hospital and the plea was taken seven days later. Section 348 of the

Criminal Procedure Code provides:

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.

It is not clear from the record what the mental status of the appellant was after attempting suicide and was hospitalized. The most prudent approach was to have his mental capacity assessed. In the interest of justice, this is an apt case where section 348 of the CPC cannot be applied strictly.

The first duty of the trial court is to ensure that the charge is correctly drafted in all aspects. In the instant case, the charge in count one ought to have read:

"contrary to section 8(1) as read with section 8(3) ..."

The upshot of the foregoing, is that the conviction is quashed and the sentence set aside. The appellant to be taken to Kangema Law courts for plea taking on 25th August 2016 before any magistrate other than Hon. J.O Magori. For avoidance of doubts the charge in count one should be correctly drafted.

Orders accordingly.

DATED at MURANG'A this 19th day of August 2016

KIARIE WAWERU KIARIE

JUDGE