



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO.45 OF 2016
NTOBURA NTOICHABA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No.4 of 2016 of the Principal Magistrate's Court at Tigania by P.M Wechuli – Resident Magistrate)

JUDGMENT

The appellant, **NTOBURA NTOICHABA**, was convicted for the Offence of rape contrary to section 3 (1) (a) (b) (3) (sic) of the Sexual Offences Act No.3 of 2006.

The particulars of the offence were that on the 9th day of August 2016 at [particulars withheld] village in Tigania West District of Meru county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of **S K L** without her consent.

The appellant was convicted after he had pleaded guilty to the offence. He was sentenced to serve twenty years imprisonment. He now appeals against the sentence.

The appellant was in person. He raised several grounds of appeal that can be summarized as follows:

1. That the learned trial magistrate erred in convicting on a plea of guilty.
2. That the learned trial magistrate erred in law by conducting the proceedings before ordering for a medical examination of the appellant.
3. That the trial magistrate erred by proceeding with the case before establishing the age of the complainant.

The state opposed the appeal and was represented by Mr. Odhiambo, the learned counsel, who contended that the appellant was precluded by section 348 of the Criminal Procedure Code from challenging his conviction.

The charge in the substantive charge was wrongly drafted. It ought to read:

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

The appellant was not prejudiced in any way for it is clear from the proceedings that he understood the

charge and adequately responded to the facts. This is curable under section 382 of the Criminal Procedure Code.

The issues the appellant raised are not open for him to challenge for he pleaded guilty to the offence. However, I must observe that once an accused has pleaded guilty, the only duty of the trial court is to enter the plea and proceed to sentence. If an accused person raises an issue of his mental status, or the court observes some peculiar behaviour by the accused, the trial court ordinarily orders for a medical examination. In the instant case that was not the position. The learned trial magistrate did not have the reason to make such an order.

In cases of rape age of the victim is not relevant. The only ingredients are penetration without consent.

Section 3(3) of the Sexual Offences Act provides as follows:

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

The state counsel conceded that the sentence was excessive. After weighing the circumstances of the offence, I reduce the sentence to fifteen years imprisonment. To this extent does the appeal of the appellant succeed.

DATED at Meru 19th day of December 2016

KIARIE WAWERU KIARIE

JUDGE