



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO.306 OF 2012
DANIEL KARANJA NDING'URI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence of the Principal magistrate's court at Githunguri Criminal Case No.1226 of 2012 by W. Ngumi R.M)

JUDGMENT

Daniel Karanja Nding'uri was charged with the offence of rape contrary to Section 3(1) (9) as read with Section 3(3) of the Sexual Offences Act No. 3 of 2006.

It was alleged that on the 22nd day of April 2011 in Githunguri District of Kiambu County intentionally and unlawfully caused his penis to penetrate the vagina of F W N by force without her consent.

The appellant was convicted on his plea of guilty and was sentenced to serve ten (10) years imprisonment. He appealed against the decision. He conceded in admitting the charge, that he understood what he was accused of save that he was intimidated by the police to admit the offence. He stated that the complainant was his girlfriend.

In opposing the offence, learned state counsel Miss Ngetich submitted that the proper procedure of taking the plea was followed and since the appellant understood the charge he was facing, no appeal lay. She submitted that the offence of rape carries a minimum sentence of ten years which is what was imposed.

Under Section 348 of the Criminal Procedure Code;

“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.”

The appellant was charged under Section 3(1) (a) as read with Section 3(3) of the Sexual Offences Act. Section 3(1) (a) defines the offence whilst Section 3(3) prescribes the penalty. Under the latter provision, a person found guilty of the offence of rape 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.

It follows that the law prescribes a minimum sentence for the offence the appellant was charged with and that is what was imposed on him. He was lucky that the learned trial magistrate did not enhance the same

to life imprisonment. The sentence was thus lawful and this court is disinclined to disturb it.

I did also note that the proper procedure of taking a plea was followed. Moreover, the appellant in his own words stated in court that he understood the charge that he was facing. He was thus not prejudiced by the manner in which the plea was taken as he knew the implications of pleading guilty.

In the upshot, this appeal lacks merit and the same is dismissed.

DATED and DELIVERED at NAIROBI this 24th Day of September, 2015

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Appellant in person
2. Ms. Oundo holding brief for Ms. Ngetich for the Respondent