



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA
HIGH COURT CRIMINAL APPEAL NO.9 OF 2015

WILSON LOLIMAAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The Appellant herein, WILSON LOLIMA was charged on 10th of November 2011 with the offence of Rape contrary to section 3(i) (a) (b) (3) of the Sexual Offences Act No.3 of 2006. He pleaded guilty to the charge and was convicted and sentenced to serve 10 years in prison. He was dissatisfied with the conviction and sentence and filed this appeal on 17/7/2014 raising (7) seven grounds in his petition of appeal as follows;

- (1) That he pleaded not guilty at trial.
- (2) That the trial Magistrate erred in law and facts by convicting him in the absence of crucial witnesses.
- (3) That the trial Magistrate erred in law and facts by convicting the appellant in absence of the complainant.
- (4) That the trial Magistrate erred in law and facts by convicting him when the elements of the alleged offence were not proved beyond reasonable doubt.
- (5) That the trial Magistrate erred in law and facts by convicting him without sufficient evidence to warrant a finding of guilty.
- (6) That the trial Magistrate erred in law and facts by relying on incredible witnesses and
- (7) That he was to raise more grounds during the hearing of the appeal.

I heard this appeal on 22/10/2015 and the appellant to his stated grounds, only added that crucial witnesses namely Selina, Loise and Kitemo were not heard.

Mr. Thuo who appeared for the State opposed the appeal relying on provisions of section 348 of the Criminal Procedure Code which provides 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.”

Mr. Thuo averred that the 10 years the appellant was sentenced to is the minimum allowed in law and is legal. On the ground, he urged the court to dismiss the appeal.

Though the Appellant did not raise an issue of the manner of recording and the steps which were taken in the plea of guilty, I have re-evaluated the process and have confirmed it well conforms with the procedure laid out in the case of *Adan Vs Republic (1973} EALR 445*. His filed grounds of appeal connote of a case that proceeded to full hearing and not one determined on a plea of guilty. The said grounds must have been adopted from such a case and wrongly used in this one. When an accused pleads guilty the prosecution have no legal duty to call witnesses and establish each and every element of the offence beyond reasonable doubt. If the appellant expected otherwise then he is wrong.

The plea of guilty is unequivocal and the sentence of 10 years imprisonment of which he is serving is legal. As rightly stated by Mr. Thuo, the learned State Prosecutor, under section 348 of the Criminal Procedure Code, he is not entitled to an appeal.

I so find and dismiss the appeal, while I uphold the conviction and the sentence.

STEPHEN GITHINJI J

25/11/2015