



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 418 OF 2010**

**P N M..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From original Conviction and Sentence in Criminal Case No. 152 of 2010 of the Chief Magistrate's Court at Mombasa – HON. OBURA - SRM)**

**JUDGMENT**

The Appellant was Convicted and Sentenced to twenty (20) years imprisonment for the offence of rape contrary to section 3(1) (a) (b) (3) of the Sexual Offences Act Number 3 of 2006.

The particulars being that on the 6<sup>th</sup> day of May,2010 at [Particulars withheld] village Msambweni, Kwale County he caused his penis to penetrate the vagina of **S M W** without her consent.

The complainant and the Appellant are relatives. The appellant being an uncle. She had testified before the lower court to the effect that on the day in question which was 6<sup>th</sup> May, 2010. She was in the house with her uncle. She had cooked lunch and went to rest on the bed as she was not feeling well. Her uncle the accused approached her while on the bed and started seducing her so as to have sex with her. She declined but suddenly he jumped on top of her, unzipped her trouser and proceeded to have sexual intercourse with her. She screamed for help but her cries were muted by the falling rain and the din caused by it on their iron roofed house. Later she managed to escape from his grip and went to the bathroom and took a shower and left. She went and reported the matter to her relatives and police. After the complainant's mother testified, the appellant informed the court that he wanted to change plea. He admitted that the evidence given by the complainant was correct and that he had sexual intercourse with the complainant without her consent.

The accused was convicted on his own plea. He does not allege that he did not understand the language used. His grounds are that the complainant wanted to withdraw the case but the court refused.

A perusal of the record of proceedings do not show that the complainant wanted to withdraw the case. She testified wholly and was cross-examined at length by the accused. Her stepmother also testified. It is after the mother of the complainant who is a sister to the Appellant testified that the accused said that he wanted to change plea.

I find no good reason to interfere with the conviction. As for the sentences, the accused was treated

as a first offender. The court sentenced him to twenty (20) years imprisonment. The charge of rape carries an imprisonment term of not less than ten(10) years.

A sentence of 20 years imprisonment is harsh and excessive for a first offender. The sentence of twenty (20) years is reduced to ten(10) years imprisonment from the time of conviction.

This appeal succeeds to that extent only.

Judgment delivered dated and signed this 27<sup>th</sup> day of **February, 2014.**

.....

**M. MUYA**

**JUDGE**

**27<sup>TH</sup> FEBRUARY 2014**

**In Open Court in the presence of:-**

Learned State Counsel Miss Mwaura

The appellant present

Court clerk Musundi