



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 67 OF 2013

K N..... APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 488 of 2013 of the Principal Magistrate's Court at Kwale – Hon. Aminga - SRM)

JUDGMENT

K N hereinafter referred to as the Appellant was convicted on his own plea and sentenced to twenty (20) years imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual offences Act of 2006.

The particulars being that:-

***“On the 1st day of January, 2013 at [particulars withheld] in Kwale County he unlawfully and intentionally caused his penis to penetrate the vagina of M N a child aged fifteen (15) years.*”**

The grounds of the Penal Code are that the appellant was not informed the consequences of the charges he was facing.

That the Sentence imposed was unlawful. Further that the plea was unequivocal and he was not given adequate time to reflect on the plea. Further that he was not afforded adequate representation as required under article 50 of the Constitution.

In the present case the charge is shown to have been read to the Appellant in Swahili language. The facts which were read to the Accused were that the Complainant was a girl aged fifteen (15) years and sometimes in January, 2013 she was staying with the Accused who was like her grandfather. The Accused turned her into a wife and later paid dowry of Ksh. 13,200/= to the Complainant parents.

Sometimes on 18th October, 2013 the Complainant fled the Accused homestead and later made a report at Tsimba Camp about the early marriage.

She was later taken to Kinago district Hospital when on examination she was found to be five (5) months pregnant. A P3 form confirming pregnancy was also produced. I wish to produce it as exhibit. Accused was later arrested and charged with this offence before the Court.

The magistrate ordered for age assessment report before the Appellant could respond. The complainant is shown to have been taken for age assessment which placed her years at fifteen (15). The age assessment report was produced in Court as exhibit number 2. The facts are shown to have been read to the appellant in Swahili language to which he answered that he facts were correct.

A perusal of the record of proceedings shows that the charge was read over to the Accused in Swahili language which language he understood.

The facts were read to him on 22nd April, 2013 and stayed pending an assessment report which was produced on 25th April, 2013. The Appellant had three (3) days to reflect on the charges read to him.

The facts were re-read to the appellant in Swahili language and he responded that they were true.

Thereafter he was convicted on his own plea of guilty and was given the opportunity to mitigate. In Sentencing the appellant the trial magistrate did note that he was a relative of the Complainant and he had clearly taken advantage of her innocence and converted her to a wife.

A perusal of the P3 form does show that the Complainant was five (5) months pregnant.

I am satisfied that the charge and facts were read to the appellant in a language that he understood. He had sufficient time to reflect on the facts that were read to him. The Conviction was safe. The age of the Complainant was properly assessed at fifteen (15) years.

On Sentence. The minimum Sentence is that of twenty (20) years Imprisonment. It cannot be said to be harsh or excessive. It is the legal minimum . I find no reason to disturb the Sentence. The upshot is that this appeal has no merit and its disallowed.

Judgment delivered dated and signed this **26th** day of **June, 2014**.

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M. MUYA

JUDGE

26TH JUNE, 2014

In open Court in the presence of:-

Thee Appellant

Counsel for the State Mr. Dzumo