

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 117 OF 2005

SIMON CHEPCHOL CHEMAI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Machakos Chief Magistrate's Criminal Case No. 2784 of 2005 by Hon. H.A Omondi , CM 18/11/2005)

JUDGMENT

1. The appellant, **Simon Chepchol Chemai** was charged with the offence of rape contrary to **Section 140** of the **Penal Code**. He was convicted on his own pleas of guilty and sentenced to serve fifteen (15) years imprisonment.
2. Now he mitigates on sentence on grounds that ;-
 - i. He is an orphan and the sole breadwinner of his family
 - ii. He suffers from ill-health
 - iii. He has reformed
3. According to **Section 140** of the **Penal Code** (now repealed) a person who was found guilty of the offence of rape was liable to imprisonment for life. Today the minimum prescribed sentence for such an offence is ten (10) years imprisonment.
4. It has been held by the Court of Appeal that a sentence must depend on facts of its own particular case. An appellate court should not interfere with the discretion which the trial court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on wrong principles of the law or the sentence was manifestly excessive in the circumstances of the case. (*See Bernard Kimani Gacheru versus Republic – Criminal Appeal No. 188/2000.*
5. In this case the appellant pleaded guilty right at the outset. He was a first offender, a young man without any exposure. All these were factors to be considered.
6. There being nothing to show that the appellant has the propensity of committing a similar offence in future, I do set aside the sentence of **fifteen (15) years** and substitute it with one for **ten (10) years**. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 30TH day of OCTOBER, 2014.

L.N. MUTENDE

JUDGE