



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Criminal Appeal 398 of 2010**

**NGOA MAKWEKWE ..... APPELLANT**

**- V E R S U S -**

**REPUBLIC .....RESPONDENT**

*(From the original conviction and sentence in Kaloleni Senior Resident Magistrate's Court Criminal Case no. 126 of 2010 – S.R. Wewa – SRM)*

**JUDGEMENT**

The Appellant was convicted and sentenced to ten years imprisonment for the offence of rape contrary to section 3(1) (a) as read with s.3(3) of the Sexual Offences Act No. 3 of 2006.

The Complainant was apportioned a piece of land to weed by the Accused for a fee.

Upon completion of the portion at about 10.00 a.m. She was shown another one which was at some distance and far away from homesteads.

While there the Appellant threatened her with a panga and proceeded to

undress her and had sexual intercourse with her without her consent. Afterwards she went and reported the matter at the local chief's office who then referred the matter to the police.

She was examined at St. Lukes Hospital by a Clinical Officer who found that she had tenderness on the supra pubic region, tenderness at the external genitalia but there was no discharge as she had taken a bath after the incident. In his submissions the Appellant does not contest the conviction but states that the sentence was harsh and excessive and prays for leniency as he has reformed while in prison.

On conviction, the Appellant was known to the Complainant before. The act took place in broad daylight. The Clinical Officer did find that there was penetration. His evidence did corroborate that of the Complainant who told the trial magistrate that the Appellant undressed her and had sexual intercourse with her severally that day before he let her go. I find no good reasons to hold that she had consented to the act. I do find that the conviction was safe. On the sentence of ten years imprisonment, I do find that it is the minimum provided for under S.3(3) of the Sexual Offences Act No. 3 of 2006. It cannot therefore be disturbed.

The upshot is that this appeal fails on both conviction and sentence and it is dismissed accordingly

**Judgment read and delivered in open Court this 20<sup>th</sup> day of February 2013.**

**MARTIN M. MUYA**

**JUDGE**

**20.2.2013**

In the presence of:

Appellant - present.

Court clerk - - Mr. Musundi

State Counsel – Mr. Jami