



REPUBLIC OF KENYA

High Court at Kericho

Criminal Appeal 55 of 2011

JOSEPH RUTO.....APPELLANT

-VERSUS-

REPUBLIC....RESPONDENT

JUDGMENT

1.The appellant, Joseph Ruto through an appeal filed on 7th November 2012 appeals to this court against the conviction and sentence of the Principal Magistrate’s Court Sotik made on 7th September 2010.

2.From the record of appeal, the appellant was convicted on his own plea of guilty of the offence of attempted defilement of a girl contrary to Section 9(1) and (2) of the Sexual Offences Act No. 3 of 2006.

3.The appeal is based on grounds appended to the appeal salient of which are that,

- 1)The appellant pleaded guilty in the expectation of leniency from the trial court;
- 2)The appellant is the sole bread winner to his family;
- 3)The sentence handed in is long in view of his age;
- 4)The appellant’s health has deteriorated considerably.

4.At the oral hearing of the appeal, the appellant was unrepresented. The State was represented by Mr. Rogoncho, a State Counsel.

5.In canvassing his appeal, the appellant pleaded with the court to reduce the number of years of his sentence as he had young children who were school-going. He further told the court that his health had

deteriorated and the court should allow the appeal on medical grounds.

6. For the State/Respondent, Mr. Rogoncho submitted that Section 348 of the Criminal Procedure Code expressly provided that an appeal does not lie from a conviction obtained by the plea of guilty of the appellant, as was the present case. He submitted further that Section 9(2) of the Sexual Offences Act does not permit review of the sentence where the sentence handed in is the minimum provided for in the section. In the present case, the learned magistrate had sentenced the appellant to the minimum sentence provided for by the said law hence the appeal was a non-starter.

7. I have considered the appeal as well as the response by the State. I make the following view of the appeal.

8. It has not been disputed by the appellant that he was sentenced to 10 years imprisonment on his own plea of guilty. The appellant has not indicated that the said plea was procured through duress, undue influence of misrepresentation and admitted before this court that he pleaded guilty on his own volition. As such, Section 348 of the Criminal Procedure Code precludes this court from entertaining an appeal where the conviction in question is made pursuant to the accused's own plea of guilty.

9. In addition, I have perused the Sexual Offences Act and confirmed that the minimum sentence provided for under Section 9(2) of the Act is 10 years. The appellant pleaded guilty to the offence of attempted defilement under Section 9(2) of the said Act and was sentenced to 10 years imprisonment, which is the minimum sentence provided for in respect of the offence. I am therefore left with no discretion to reduce the sentence made, the same being at the minimum number of years prescribed in law.

10. As for the mitigation points pleaded by the appellant regarding his being a breadwinner and as being in bad health, I understand the plight of the appellant but is unable to disturb the sentence and conviction, as doing so would be in contravention of express provisions of the law. This court is the custodian of the law and would be acting against its constitutional mandate if it bought the appellant's plea of mercy and leniency at the expense of the law.

11. In the circumstances, the appeal fails and is hereby dismissed. Equally, the conviction and sentence of the subordinate court is hereby confirmed.

12. These shall be the orders of the court.

DATED SIGNED AND DELIVERED AT KERICHO THIS 11th DAY FEBRUARY 2013.

J.M. MUTAVA

JUDGE