



**REPUBLIC OF KENYA**

Cases in Magistrate Courts

**Criminal Appeal 7 of 2012**

JOSEPH OGINGA ORAMO.....APPELLANT

V

REPUBLIC.....RESPONDENT.

[Appeal from the Conviction and sentence in Criminal case of the Resident Magistrate's court dated 9.6.2011 at NDHIWA: HON. B. OMWANSA ESQ., - R.M.

IN

RM'S C. NDHIWA NO. 59 OF 2011]

**JUDGMENT OF THE COURT.**

The Appellant Joseph Oginga Oramo was arraigned before the principal magistrate's court at Ndhiwa charged with 2 offences. The first was attempted rape C/Section 4 of the sexual offences Act No. 3 of 2006 with an alternative charge of indecent act with an adult C/section 11(6) of the sexual offences Act No. 3 of 2006.

Count 2 was Assault Causing Actual Bodily Harm C/Sec. 251 of the Penal Code.

He pleaded guilty on both counts and was convicted and sentenced to serve twenty five (25) years imprisonment on count 1 – Attempted Rape and two (2) years imprisonment on count 2 – (Assault Causing Actual Bodily Harm). The learned trial magistrate ordered that the sentences run concurrently.

The Appellant has appealed against the sentence only and his grounds are as follows.

**1. That he pleaded guilty to the charge of Attempted Defilement.**

**2. That he is widowed and is sole breadwinner of his family of 6 young children who are still going to school and not able to fend for themselves and are likely to be street children.**

**3. That he is remorseful hence praying for a non-custodial sentence, further review of the sentence or to be set free since he has reformed.**

At the hearing of the Appeal he reiterated that his appeal was against the sentence only. He then stated that when the proceedings took place he was ill and that he had been beaten during the arrest. He contended that the sentence meted was too long and hence this appeal and further stated that even now he is sick.

Mr. Imbali for the Republic opposed the appeal. He contended that the accused had pleaded guilty to the charges. He noted that the Appellant had in his mitigation at the court below only stated that he was ill but not that he was suffering from HIV/AIDS and Tuberculosis.

He contended that the state opposed the Appeal because what would have happened had the Appellant succeeded. He contended that this was not the first time the accused had committed such an offence and noted that this must have been what the learned trial magistrate took into consideration in sentencing him to 25 years. He noted that the law prescribes life imprisonment as the maximum sentence and contended that the sentence meted was well though out.

In reply, the Appellant urged the court to assist him.

I have carefully considered the petition of Appeal, the grounds thereof and the submissions by the Appellant and the counsel for the Republic. Section 4 of the Sexual Offences Act provides as follows:

***“Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape and is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.”***

This is therefore a minimum sentence of 5 years and a maximum sentence of life imprisonment.

In sentencing the accused to 25 years imprisonment the Learned Trial Magistrate took into consideration that the Appellant was not a first offender having been charged with rape previously and sentenced to 7 years imprisonment. He also noted that the accused now Appellant was not remorseful and had been

aware of his status when he committed the offence.

I do agree with counsel for the Republic that the sentence was” well thought out” and see no good reason to interfere with it.

As for count 2 the Appellant was sentenced to serve 1 year imprisonment which sentence was to run concurrently with that imposed on count 1. I do not consider that sentence to be harsh given the circumstances of the offence. That the accused person is unwell was considered by the Trial Magistrate. He attempted to introduce a new ground of Appeal by stating that he was unwell when the proceedings took place. That is however not supported by the record as the court had twice had ordered him treated before he finally went to court and asked it to read the charges to him whereupon he pleaded guilty. The Appeal is dismissed.

E.N. MAINA,

JUDGE 15.3.2013.

Judgment is signed, dated and pronounced in open court in the presence of:

Miss Valerie for the Republic

The Appellant in person.

Eudice Okombo – Dholuo Interpreter.

Interpretation – English/Dholuo.

**E.N. MAINA,**

**JUDGE 15.3.2013.**