REPUBLIC OF KENYA

High Court at Nakuru

Criminal Appeal 272 of 2011

DANIEL NJOROGE NJENGA……...……...APPELLANT

V

REPUBLIC…….RESPONDENT

JUDGMENT

Daniel Njoroge Njenga was charged with the offence of defilement contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act No. 3 of 2006** before the Principal Magistrate's Court, Nyahururu. In the alternative, he was charged with indecent act with a child contrary to **Section 11(1)** of the **Sexual Offences Act No. 3 of 2006**. He pleaded guilty to the main charge and was sentenced to imprisonment for life. He now appeals against both conviction and sentence. The grounds upon which he preferred the appeal are that:-

1. **He was lured into pleading to the charge;**

2. **That he was tortured before being taken to court;**

3. **That the plea was read in a language that he did not understand.**

He therefore prays that there be a retrial or the court do acquit him.

The learned counsel for the State, Mr. Marete, opposed the appeal for reasons that the appellant pleaded guilty to the offence; the facts were read to him and he responded that they were true; that he never complained that he did not understand English or Swahili. He urged the court not to interfere with the conviction or sentence.

Section 348 of the **Criminal Procedure Code** bars an appeal where a person pleads guilty except if the challenge is in regard to the legality of the sentence. It reads:-

"S.348. No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence."

Despite the above provision, it is now established law that the said provision is not a complete bar or prohibition against an appellant's right of appeal against conviction. In **Ndete v Rep. [1991] KLR 567**, the court said:-

"1. There is a long line of authority to the effect that the bar to an appeal against a conviction based on a guilty plea is not absolute.

2. ….

3. Where, as happened in this case, at the time of the taking of a plea there appears to be an unusual circumstance such as injury to the accused, or the accused is confused or there has been inordinate delay in bringing the accused to court from the date of arrest etc, then an explanation of the circumstances must form an intergral part of the facts to be stated by the prosecution to the court."

The appellant alleges that he was lured into pleading guilty to the charge by the police. The appellant did not state the nature of the luring nor did he name the person who lured him. He never complained of such luring at the time of plea or mitigation. There is no evidence that the trial court was party to any such act.

The appellant appeared before the Senior Resident Magistrate, Mongare, on 7/11/2011. The record shows that the language of the court was English and Kiswahili. After the charge was read to the appellant, he agreed that it was true. The facts were read to him. The record shows that he accepted that they were true. The court convicted him and after the prosecutor addressed the court, the appellant was invited to give his mitigation. He said that he was sick, had rib pain and had not seen a doctor and that he was sorry. The response of the appellant clearly demonstrates that he understood the language of the court, the charge and facts. Even if the court did not specifically record the language of the court then, he understood the charge and the facts.

The appellant also claims to have been tortured and injured by the police. If there had been any visible injuries on the appellant when he first appeared before the court, the court would have noted them. It is only in mitigation that he claimed to have been sick. He never complained that he was tortured and beaten up. This court is satisfied that the plea was unequivocal, the appellant understood the language of the court, understood the facts and only pleaded with the court that he was not well. The circumstances under which the plea was taken do not warrant any interference by the court.

Having considered the grounds of appeal, I find that the conviction was proper and I hereby confirm it. The sentence prescribed under **Section 8(2)** of the **Sexual Offences Act** is life imprisonment. The sentence is legal and this court has no reason to interfere with it. In the end, I find that the appeal lacks merit, it is hereby dismissed. It is so ordered.

DATED and DELIVERED this 26th day of April, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

The appellant present in person

Mr. Chirchir for the State

Stephen Mwangi – Court Clerk