



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 89 of 2004

DAVID MITHIKA.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

LESIIT J.

JUDGEMENT

The Appellant was convicted by the Chief Magistrates Court Meru with one Count of Unnatural Offence contrary to section 162(a) of the Penal Code. He was sentenced to 21 years imprisonment on 20th May, 2004. Being aggrieved he filed this appeal.

He has five grounds of appeal in his petition as follows:

- 1. I pleaded guilty to the charge without knowing the consequences.**
- 2. That I had no legal representation because I could not afford.**
- 3. It was my first time to appear in court of law and I did not know the procedure.**
- 4. That my lordship I am not aware whether I committed the offence or not because by that time I was mentally sick.**
- 5. I pray that the sentence of 21 years imprisonment be considered excessive and harmful considering the fact that I am a young man of 24 years of age.**

The Applicant argued only his appeal against sentence when he came for the hearing of his appeal. He submitted that his sentence was harsh and excessive and urged the court to reduce it.

The State was absent on the day the appeal was heard despite having been served with dates.

I have considered this appeal. The Appellant was convicted under Section 162(a) of the Penal Code. A person convicted under that section is liable to imprisonment for a period not exceeding 14 years.

The Appellant was sentenced to 21 years imprisonment. That was an illegal sentence.

The Appellant has served 9 years imprisonment. It is my view that the Appellant has served sufficient punishment for the offence.

In the result, I do allow his appeal against sentence, set aside the imprisonment of 21 years and reduce it to the period already served. He should be set free forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF MAY, 2013.

LESIIT, J

JUDGE.