



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 118 OF 2011.

ELIAS LONYANGARENG ALIAS KAKI ::::::::::::::: APPELLANT.

VERSUS

REPUBLIC ::::::::::::::: RESPONDENT.

(BEING AN APPEAL FROM THE ORIGINAL CONVICTION AND SENTENCE OF R.M. WASHIKARM IN CRIMINAL CASE NO. 679/2011 DELIVERED ON 16TH AUGUST, 2011 AT KAPENGURIA).

J U D G M E N T.

The appellant, **Elias Tonyang'areng Alias "Kaki"**, appeared before the Resident Magistrate at Kapenguria charged with defilement contrary to section 8 (1) read with section 8 (2) of the Sexual Offences Act, in that on the 12th August, 2011 at [particulars withheld] West Pokot County, caused his genital organ to penetrate the genital organ of F C, a child aged seven (7) years.

After the charge was read to him, the appellant pleaded guilty to the offence whereupon the facts of the offence were narrated to him by the prosecution. He admitted the facts and was accordingly convicted on his own plea of guilt.

Consequently, the trial magistrate sentenced him to life imprisonment.

However, being aggrieved by the sentence, the appellant preferred the present appeal on grounds that:-

- 1. The learned trial magistrate erred in law and facts by convicting and sentencing him on an unequivocal plea.***
- 2. The learned trial magistrate erred in law and facts by not warning herself on the weight of the matter before her.***
- 3. The learned trial magistrate erred in law and facts by solely relying on a P3 form that had no incriminating facts to warrant such a harsh sentence.***
- 4. The learned trial magistrate erred in both law and facts by convicting and sentencing him while relying on prosecution facts which were not conclusive.***
- 5. The learned trial magistrate erred in law and facts by convicting him by shifting the burden of proof to him.***
- 6. The learned trial magistrate erred in law and facts by convicting and sentencing him despite***

not warning him.

7. *The learned trial magistrate erred by conducting the proceedings in a hurry and not giving the appellant time to know the consequences of the charge.*

At the hearing of the appeal, the appellant represented himself and relied on his written submissions in support of his case. The learned prosecution counsel, M/s. Limo, opposed the appeal on behalf of the state/respondent by submitting that the proceedings were conducted in the English language which was translated into the Pokot language which the appellant understood. Further, the appellant made an unequivocal plea of guilt and was convicted accordingly.

The learned prosecution counsel contended that the innocence of the seven- year old girl was robbed by the adult appellant who ought to have known the consequences of his unlawful act. Therefore, this appeal ought to be dismissed.

In his rejoinder, the appellant stated that he was misled by a police officer to plead guilty. All considered, the principles upon which an appellate court can interfere with the discretion of a trial court as regards sentence are well settled.

Thus, an appellate court can only interfere where the trial court in assessing the sentence acted on wrong principles or has imposed a sentence which is manifestly inadequate or manifestly excessive (see, **Diego Vs. Republic (1985) KLR 621**).

Herein, the record of the trial court clearly show that the learned trial magistrate complied with the legal requirements pertaining to the taking of plea as set out in the case of **Adan Vs. Republic (1973) EA 445**. The plea was thus unequivocal and the resultant conviction was proper and lawful. There was no legal obligation placed on the learned trial magistrate to warn herself with regard to the weight of the matter or to warn the appellant of the consequences of the charge.

The facts narrated by the prosecution and admitted by the appellant were sufficient and conclusive in establishing the offence and its ingredients such that the appellant's conviction is a non-issue in this appeal.

As regards the sentence, it is apparent that the appellant considers it harsh and excessive. However, section 8 (2) of the Sexual Offences Act provides that a person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life. This is a mandatory provision and the evidence availed in court by the prosecution established that the child complainant was aged seven (7) years at the time of the offence.

Consequently, the sentence imposed on the appellant by the learned trial magistrate was in accordance with the law and cannot therefore be said to be harsh and excessive.

In the upshot, this appeal is devoid of merit and is hereby dismissed.

[Delivered and signed this 27th day of September, 2013.]

J.R. KARANJA.

JUDGE.