



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 30 OF 2010

MICHEAL MBAABU MUTEGLI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 359 of 2009 in the Principal Magistrates Court at Chuka)

JUDGEMENT

1. The Appellants appeal has seven grounds in his Petition of appeal.
2. **That the learned trial magistrate erred in law and fact in failing to observe that there was not any first report given with my names in the police station.;**
4. **That the learned trial magistrate erred in law and fact in failing to find that the charge and conviction was not supported by the weight of evidence adduced.**
6. **That the learned trial magistrate erred in law and fact in dismissing and disregarding my sworn defence and my defense witness without giving any cogent reason for the same.**
3. The Appellant relied on written submission for his appeal. In brief appellant urged that the learned trial magistrate should have considered that the case was a frame up given delay in arraigning Appellant in court, a period of 2 months. Secondly the Appellant urged that the learned trial Magistrate failed to consider the grudge which existed between Appellant and complainant's family after the Appellant was acquitted of a charge of possession of firearm he was framed with offence of defiling the complainant. Thirdly that the learned trial magistrate failed to consider he was not examined and finally that the medical report was incomplete as it was lopsided.
5. This is a first appellate court. I have considered this appeal and have subjected the entire evidence adduced before the court to a fresh analysis and evaluation, and have come to my own conclusion while bearing in mind that I neither saw nor heard any of the witnesses. I have given due allowance. I am guided by the Court of Appeal case in the case of **Okeno Vrs. Republic** 1972 EA 32 where it held:

The brief facts of the case are that the Appellant went to the complainants home and found her reading at the sitting room. The complainant was 17 years old at the time. The Appellant first asked for the complainant's mother. When he heard that she was not in, he removed a knife and used it to intimidate the complainant pinned her down, tore off her trouser and had carnal knowledge of her. He then ran

away. The Complainant informed her mother who took her to the Police and same night to Chuka Hospital. Eventually the Appellant was arrested and charged with this offence. The Appellant and complainant were neighbours since birth.

- The Appellant called his mother as a witness who said that the complainant was her granddaughter and that she could not have framed the Appellant with the charge.
- The Investigating Officer of this case was PW3, PC Wakoli according to his testimony he stated:

11. It is clear from the evidence of the Investigating Officer that he had “forgotten” about the complainant’s case until Appellant was brought in for another offence. Does this justify an inference that the case was fabricated as the Appellant suggests in his appeal? The Investigation process had apathy to the complainant’s case. However, the laxity by the Police cannot justify the complainant and her family being blamed for the delay. Neither does it justify an inference that the case was a fabrication as Appellant suggested. I noted that in his defence appellant was categorical that the complainant’s mother was a good neighbor and did not frame him.

13. I have considered Appellants contention that the case was a fabrication against the Appellant by complainants family and that there was a grudge between the two parties and find it unmeritorious and without any basis.

15. The Medical Report on the complainant was intended to be subject to any comparative examination. The complainant’s medical Report was complete. Lack of any medical examination of the Appellant does not render it lopsided. Nothing turns on this point.

17. Regarding sentence the Appellant was charged under Section 8(1) as read with Section 8(4) of the Sexual Offences Act. A person convicted of an offence under that section is liable to imprisonment for a period not less than 15 years. 15 years was therefore the minimum sentence. It cannot be reduced any further. In the circumstances, I confirm the sentence imposed against the Appellant in the circumstances.

19. I have come to the conclusion that the Appellant’s Appeal has no merit both against conviction and against the sentence. Accordingly the conviction is upheld and sentence confirmed as earlier stated. I dismiss the appeal in total.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF OCTOBER 2013

J. LESIIT

JUDGE