



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 227 OF 2009

TIMOTHY KOOME MUCHENAAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case No.2287 of 2009 of the Principal Magistrate's Court at Maua)

J U D G M E N T

The appellant TIMOTHY KOOME MUCHENA was charged with an offence of defilement of a girl contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act No.3 of 2006.

The appellant pleaded guilty to the charge. That upon facts of the offence being given the appellant admitted that they were correct. The trial Magistrate after mitigation sentenced the appellant to twenty years imprisonment.

The appellant being aggrieved by the sentence preferred this appeal. The appellant is seeking his sentence to be reduced on the grounds that the sentence imposed upon him is excessive and that he is remorseful for the act he had committed. That he is a first offender and has long abandoned the peer group that misled him. He also stated that he has a tender family back home longing for his support.

The appellant did not in this appeal challenge the conviction but sentence which he averred was manifestly excessive.

Mr. Ongige, learned State counsel opposed appellant's appeal as the appellant was convicted on his own plea of guilty and that the sentence was in accordance with the law.

He urged that under Section 8(3) of the Sexual Offences Act No.3 of 2006; the sentence provided for is a term not less than 20 years. He urged that the trial Magistrate was very lenient to sentence the appellant to serve the minimum period of 20 years. He argued the appellant had defiled a girl aged 12 years and urged the court to dismiss the appeal.

Under Section 8(1) and (3) of the Sexual Offences Act it is provided:-

“8. (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

Section 8(3) of the Sexual Offences Act provides for a person who commits an offence of defilement with a child between 12 and fifteen years to be sentenced for a term of not less than twenty years.

In the result the sentence imposed upon the appellant was lawful and being the minimum sentence the appeal is dismissed.

Right of Appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 28th DAY OF OCTOBER, 2013.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:-

1. Appellant in person

2. Mr. Ongige for the State

J. A. MAKAU

JUDGE