

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 36 OF 2011

LESIIT, J

SAID KUSOW IBRAHIM.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(Being an appeal from SRM's Court Moyale Criminal Case No. 429 of 2010 being

Judgment and sentence of Mr. G. Sogomo SRM

delivered on 21ST MAY, 2010.)

JUDGEMENT

1. The Appellant **SAID KUSOW IBRAHIM** was convicted with one count of rape contrary to section 1(a) of Sexual Offences Act No. 3 of 2006. He was sentenced to serve an imprisonment term of 20 years. Being aggrieved by the conviction and sentence he filed this Appeal.
2. The Appellant in his submission urged that he was not challenging the conviction but rather the sentence. He urged the court to reduce the sentence imposed against him because he has reformed.
3. Miss Murithi learned State Counsel opposed the Appeal and urged the court not to reduce the sentence imposed against the Appellant. Counsel submitted that a person convicted of rape is liable to imprisonment for a term not less than 10 years which can be enhanced to life imprisonment. Counsel urged that imprisonment term of 20 years imposed on the Appellant was not excess.
4. I have considered the Appellants Appeal against the sentence. I note from the P3 form on the complainant in this case that she was a young girl of 19 years of age in addition to the rape which is serious offence the doctor noted that the Appellant had also suffered genital tears. On examination of the specimen from the complainant had positive results noting there was presence of spermatozoa and HVS and recommended that the patient (complainant) should undergo VCT. The reason for the recommendation that the complainant should undergo VCT has been explained by the Doctor who examined the complainant and who testified as PW6.
5. I have noted from the proceeding that the complainant was a deaf girl and was therefore venerable. I also noted that the Appellant had admitted that the conviction in this case was the second such conviction. Taking all this into consideration I do find that the offence was aggravated because the Appellant attacked a deaf girl and caused her bruises and injuries in the cause of raping her. This was also not his first such conviction. In all the circumstances of the case I find the sentence of 20 years imprisonment was neither harsh nor excessive. I therefore find his appeal of no merit and dismiss it accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 23rd DAY OF OCTOBER, 2013.

J. LESIIT

JUDGE