



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANGA

HIGH COURT CRIMINAL APPEAL NO. 311 OF 2013

(Appeal from the Original Conviction and Sentence in Criminal Case No. 1373 of 2010 dated 4th November 2010 in the Chief Magistrate's Court at Thika by Hon. L. Wachira - SRM)

CHRISTOPHER NDICHU GACHOKA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The Appellant was convicted on 5 counts of the charges he faced for the offence of defilement of a child contrary to Section 8(1)(2) of the Sexual Offences Act 2006. On conviction he was sentenced to life imprisonment for all the counts and sentence is to run concurrently.

He has appealed to this Court against the said conviction and sentence. The initial Memorandum of Appeal attacked the conviction. The Grounds of Appeal were:-

1. That the learned trial Magistrate erred in law and facts in convicting with the evidence of PW1 and PW2 without considering that their evidence had no corroboration and it was a plant on Appellant by PW5 the father of the 1st child.
2. That the learned trial Magistrate erred in law and facts in failing to notice that the evidence of the Doctor herein had no connection with the case.
3. That the learned trial Magistrate erred in law and facts in putting consideration the evidence of PW5 without considering there was a grudge between the Appellant and PW5 who was the first child's father.
4. That the learned trial Magistrate erred in law and facts in failing to consider the Appellant's defence statement.

When he was furnished with the certified proceedings and he did not file any additional or Supplementary Grounds of Appeal.

When the Appeal commenced, the Appellant stated that all he sought and wanted was for the Court to reduce the sentence. It would seem the Appeal was one against sentence and not both sentence and conviction.

The Appeal was opposed. Learned State Counsel appearing for the Respondent Mr. Njeru said that

though PW1 did not give her age but there was the evidence of her parents. All the children were below the age of 11 years. Mr. Njeru submitted that unfortunately for the Appellant the sentence is fixed. It can only be life. He urged the Court not to interfere with the life sentence. The Appellant did not rebut the submissions of the State Counsel but restated that he prayed for the reduction of sentence.

As the Court of first Appeal, I have to consider the evidence once again and weigh it to see if the conviction was safe and the sentence lawful. The Appellant in his Grounds of Appeal attacked the evidence of PW5 who he claimed had a grudge against him. The evidence of PW5 was that he is a driver and on 26th March 2010 he arrived home and was told his daughter had an issue. He talked to her and she informed him that she had gone with her cousin to the house of the Appellant and the Appellant locked them in a house and had sexual intercourse with them. His child was aged 8 years. She was there twice. PW5 did not believe his daughter and told her to show him the place. She led him to the place where the Appellant was living. They found the Appellant who was very rude and after an exchange of words was removed from the house by neighbours. The Appellant was beaten up and led to the police.

The cross-examination by the Appellant was not extensive. The record reflects that the Appellant only elicited the following:-

The witness had been travelling before 26th March 2010 and he had never threatened to kill the Appellant if he did not join PW5's sect.

PW5 denied ever having a sitting with the Appellant.

The evidence of the minors was consistent. They positively identified the Appellant who they called Gachoka. He was on 17th March 2010 found in the act of defiling an unidentified child by PW1 and PW2. The witnesses were graphic in the description of what the Appellant did to them on each occasion. When PW6 the Clinical Officer testified on the medical reports and P3's the Appellant did not ask her any question. The attack on the medical evidence adduced in trial is therefore a mere afterthought and is not supported by the record. The Appellant's defence statement was very brief. It was an unsworn statement given on 22nd October 2010. The Appellant stated that he lived in Ruiru and on 25th March 2010 he went to work and in the evening he went home. That three men went to him and told him to join Mungiki and he declined and they said they would come the next day. They returned but he again refused. On 27th March 2010 they came at 5.45 am and he was told to decide and they beat him up and took him to the police. The evidence of the adult witnesses corroborated the evidence of the minors and there is no doubt the Appellant is a paedophile. Who was arrested at around 7.00pm on 26th March 2010 after PW1 aged 8 had show her father the house where the Appellant had been defiling them. The Appellant was flushed out of the house and taken to the Police.

Having carefully evaluated the evidence and the submissions of the Appellant as well as the response by Mr. Njeru State Counsel for the Respondent I find that there is no merit in the Appeal. The evidence was cogent and consistent. It had no gaps. There was no malice demonstrated nor a scheme to frame the Appellant. The children were clear in their testimony as to how the Appellant defiled them and gave them 20/-. He would threaten them with death if they revealed the happenings in the tin shed where he defiled many minors. The conviction and sentence were safe. There are no sufficient grounds to interfere with the finding by the learned trial Magistrate. The sentence of life imprisonment is lawful. I dismiss the Appeal in its entirety. Appellant to serve the life sentences.

Dated, signed and delivered this 28th day of November 2013

Nzioki wa Makau

JUDGE