

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANGA

HIGH COURT CRIMINAL APPEAL NO. 377 OF 2013

(Appeal from the Original Conviction and Sentence in Criminal Case No. 3562 of 2010 dated 13th December 2011 in the Chief Magistrate's Court at Thika by Hon. B. J. Ndeda - PM)

PETER NJOROGE MBURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The Appellant herein Peter Njoroge Mburu was convicted by the trial Magistrate for the offence of defilement contrary to Section 4 of the Sexual Offences Act, No. 3 of 2006. He was sentenced upon conviction on the main count and sentenced to serve 10 years imprisonment. He appeals against the sentence.

The Appellant seeks a reduction of the sentence and frames the Grounds of Appeal as follows:-

1. That I persuade this Honourable Court to consider ordering the sentence of 10 years imposed to be served under probative terms.
2. That may this Honourable Court extend clemency upon me and consider reducing the sentence imposed.
3. That may this Court consider my mitigation in the Court below and extend clemency on humanitarian grounds taking into account that I am a first offender and remorseful for whatever transpired.

Mr. Okeyo for the State said that the offence was attempted rape contrary to Section 4 of Sexual Offences Act 2006. The subject was the grandmother. He stated that under Section 4, the statutory minimum is 5 years but can be enhanced to life considering the circumstances.

Being an Appeal against sentence, I have to consider the position of the State. Mr. Okeyo submitted that under the Act, the minimum sentence is 5 years but it can be enhanced to life depending on circumstances. In the case before the trial Magistrate, the Appellant had made an attempt to rape her but that was thwarted by the victim, an elderly woman. She knew him and his parents were summoned by the family he was handed over to the police. Upon conviction he was sentenced to a 10 year custodial sentence for the attempt.

Having, at this stage of the appellate process, evaluated and analysed the facts of the case and the verdict of the learned trial Magistrate I find that the said Magistrate did not err either on the law or facts. The conviction was safe and even the Appellant has not challenged it. The sentence was not inordinately high since the Appellant could easily have been sentenced to life imprisonment. He only went as far as touching her and trying to lift her skirt all the while telling her he wanted to sleep on her bed. He pleads for clemency and seems rather remorseful for the action. He was stated to have been under the influence of alcohol. In the present case, I exercise my discretion and disturb the sentence and reduce it to 7 years from date of first conviction.

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

Nzioki wa Makau

JUDGE