



**ORIGINAL**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CRIMINAL APPEAL 176 OF 2011**

**SIRON OTIENO ONYANGO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

***(From original conviction and sentence in Criminal Case number 256 of 2011 of the Principal Magistrate's Court at Siaya – W. K. Chepseba)***

**JUDGMENT**

- 1). The appellant herein and another were charged with the offence of gang rape contrary to Section 10 of the Sexual Offences Act No. 3 of 2006. The particulars are that on the 27<sup>th</sup> day of April 2011 at [particulars withheld] in Siaya District within Nyanza Province, intentionally and unlawfully caused their penises to penetrate the vagina of **E A O**. The appellant pleaded guilty to the charge and was sentenced to 20 years imprisonment.
- 2). The appellants appeal is premised on 4 grounds which are basically mitigation. Equally his written submission before this court are mitigation in nature.
- 3). The prosecution established through the facts presented to the court that the appellant forcefully raped the complainant on 27.4.2011. They had knives and consequently they threatened to harm her if she did not comply. The complainant was aged 18 years. The prosecution produced treatment documents including a P3 Form to back up its case.
- 4). The proceedings shows that the appellant clearly understood the charges as they were read to him. There was also an alternative charge of committing an incident act with an adult contrary to Section 11 (A) of the Sexual Offence Act 203/2006 – which he denied.
- 5). It was held in **Boit v Republic (2002) 1KLR 815** that:

**“If an accused person is fully informed on all these matters and the record of the trial court shows that he has been so informed but has nevertheless chose to plead guilty, then there cannot be any genuine complaint thereafter.”**

The Court went further to state that there is no provisions in the constitution that debar someone from pleading guilty.

- 6). In this case the appellant fully understood the charge and he pleaded guilty. Further as earlier on

observed the grounds of appeal as well as his submissions are dwelling basically on mitigating the sentence. It is clearly therefore understood that the appellant appreciated the charges that faced him.

7). Was the sentence harsh?The Act provides a sentence of not less than 15 years.He was sentence to 20 years imprisonment. From the facts of the case which he fully admitted the whole crime was premeditated.The appellant and his co-accused as at 4:00pm had began hunting the complainant. They used force and threats and did not give the complainant any chance to escape.

8). My finding is that the sentence ought not to be disturbed. There are no mitigating circumstance at all. In the premises I do dismiss this appeal.

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

**H. K. CHEMITEI**

**JUDGE**

**In the presence of:**

.....State Counsel

.....Advocate for the applicant

*HKC/va*