



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 181 OF 2011

MATHEW GARERO MWARUWA APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 1906 of 2009 of the Chief Magistrate's Court at Mombasa – **Hon. Mutoka - CM**)

JUDGMENT

MATHEW GARERO hereinafter referred to as the appellant was Convicted and Sentenced to five (5) years for the offence of kidnapping a minor (abduction of a child contrary to section 262 of the Penal Code).

The particulars are that on the 4th day of June, 2009 at [Particular withheld]– Mombasa County, jointly, with others not before the Court abducted **J M T** a child aged eleven (11) years with intent to dishonestly obtain Ksh. 2 million from **H M A** the mother of the said child.

In the second Count the Appellant was charged with demanding money with menaces contrary to section 302 of the Penal Code.

The particulars being that on the 4th day of June, 2009 at [Particulars withheld]– Mombasa County, jointly with others not before the Court and with intent to defraud demanded Ksh. 1 million through phone from **H M A** as ransom to release **J M T**.

The appellant has abandoned grounds (prayers) 1, 2, 3, 5, 6, 7 and are left with prayer No. 4 and 8 grounds (prayers) No. 4 and 8 are related to Sentencing only.

Ground No. 4 is to the effect that the trial magistrate misdirected herself on the issue of Sentencing by discriminating the Appellant.

Ground No. 8 . That the trial magistrate failed to consider all the doubts mentioned in the appeal and gave excessive harsh Sentence and failed to consider the mitigating factors.

The trial magistrate in her Sentencing notes did state that she had considered the mitigating factors offered by all the Accused persons. She also noted that the 1st and 3rd Accused had been in custody for at least one and a half (1 ½) years for 1st Accused and two (2) years for the 3rd Accused. The appellant in this case was the third Accused in the trial in the lower Court. He had been charged with two Counts.

The first one of abduction of a child contrary to section 262 of the Penal Code and the second one of demanding money by menaces contrary to section 302 of the Penal Code. He was found guilty on both and was Convicted accordingly.

The trial magistrate Sentenced the appellant and 1st Accused to five years imprisonment in respect to first Count. The co-accused No. 2 and 4 were Sentenced to (5 ½) years imprisonment in respect to the same charge.

In respect of the 2nd Count the 1st Accused and the appellant were Sentenced to five (5) years imprisonment each. The Sentences were ordered to run concurrently. The appellant alleges that the Sentence was discriminative. I find no discrimination and if there was any it was not prejudicial to him as his colleagues. Accused No. 2 and 4 were Sentenced to a lower Sentence of (5 ½) years imprisonment whereas his was Sentence for five years.

It is alleged that the Sentence was manifestly harsh.

The offence of abduction carries a maximum Sentence of seven (7) years and that of demanding by menaces carries a maximum Sentence of ten years imprisonment.

The trial magistrate did consider the inhuman treatment visited on the complainant who was put in a sack and transported to unknown place while blind folded. It is also noted that the child was confined in a toilet for a long period during the kidnap ordeal. The parents ordeal during the period of more than four (4) days. I find that the Sentence of five years imprisonment is not harsh in the circumstances of this case.

This appeal has no merit and its dismissed.

Judgment delivered dated and signed in open Court this **22nd** day of **November, 2013**.

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M. MUYA

JUDGE

22ND NOVEMBER, 2013

In the presence of :-

Learned State Counsel Mungai

Learned Counsel for the appellant Shimaka holding brief Ngeno

Court clerk Musundi