



IBRAHIM MURAGE MWENDAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. 26 of 2008 of the Resident Magistrate's Court at Gatundu by D.G. Karani – Resident Magistrate)

JUDGMENT

The appellant, **IBRAHIM MURAGE MWENDA**, was convicted for the offence of Defilement contrary to **section 8 (1) as read with Section 8 (4) of the Sexual Offences Act**.

After convicting the appellant, the learned trial magistrate sentenced him to 15 years imprisonment.

In his appeal to this court, the appellant only challenged the sentence. He asked the court to reduce the sentence on humanitarian grounds.

The appellant asked the court to order that the balance of the sentence which he was yet to serve, be served under probation.

He pointed out that he was a first offender and also that;

“the issue was not all that serious.”

Finally, the appellant said that his parents died during the period when he was on trial. He asked for clemency, saying that he was very remorseful for what he had done.

In answer to the appeal, the learned state counsel, Mr. Mulati, submitted that the sentence imposed was the minimum prescribed by law. Therefore, he asked the court to dismiss the appeal.

When the appellant asks the court to reduce the sentence on humanitarian grounds, I do not understand him to be challenging the legality of the sentence. He is simply saying that although the sentence that was handed down was lawful, he was pleading with the court to reduce it.

In effect, such an appellant was more probably than not, seeking the revision of the sentence. That is what the appellant herein is deemed to be doing.

Why is he seeking a reduction in the sentence?

It is because he was remorseful for what had happened; and because his parents died whilst the trial was going on. Thirdly, it was because the issue was not all that serious.

First, I must say that I am appalled at the appellant's description of an act of defilement as being something that was not all that serious.

Defilement is a very serious crime. It leaves the victim with a physical as well as a psychological scar. And because the victim would be under the age of 18, the scars would live with her for a long period of time.

In this case, the victim and the appellant had known each other before the incident. She knew him as a farm-hand of Mama Kabura alias Esther. Mama Kabura was a neighbour to the family of the victim.

The victim was in the shamba, where she and her mother were cultivating. At some point, the victim's mother sent her back home, to get fertilizer.

Whilst the victim was passing through a thicket of macadamia trees, she saw the accused at a distance.

Later, when the victim was on her way back to the shamba, the appellant emerged from the thicket, and pushed her to the ground.

The victim fell to the ground, face forward. As a consequence, she bled from her mouth and nose.

Shortly after the appellant sat on her back, whilst covering her mouth with his hand, the victim passed out. She had experienced difficulty in breathing.

It is in those circumstances that the appellant defiled her, after ripping-off the elastic band of her panties.

The doctor who examined the victim found that she had lacerations on the opening of her genitalia and on her labia minora. Her hymen was broken and the vulva region was inflamed. She also had a foul-smelling discharge with faecal matter on her rectum.

Those particulars are a clear manifestation of how much physical damage was caused to the victim. And the said physical damage would most probably have resulted in proportional psychological damage.

In effect, the offence committed by the appellant was a very serious matter, contrary to his views.

Finally, as the trial court noted, and so too as was submitted by the respondent herein, the prescribed sentence would be not less than 15 years imprisonment. In the circumstances, it is not open to this court to reduce the sentence that was imposed.

Accordingly, the appeal is dismissed. I uphold both the conviction and the sentence.

Dated, Signed and Delivered at Nairobi, this 26th day of January, 2012.

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FRED A. OCHIENG
JUDGE