



REPUBLIC OF KENYA

High Court at Kericho

Criminal Appeal 26 of 2012

RICHARD KIPSANG LANGAT.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

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1. This is an appeal by the appellant, Richard Kipsang Langat, against the sentence of the Principal Magistrate's Court Sotik passed on 14th December 2010. The appellant was convicted of the offence of defilement on his own plea of guilty and sentenced to 20 years imprisonment.
 2. The appeal is based on the grounds that:
 - 1) The appellant is absolutely remorseful of the felony he committed and promises never to repeat it again.
 - 2) The offence was committed under influence of bad company which the appellant now promises to shun.
 - 3) The appellant is the sole breadwinner of his family
 - 4) The twenty year sentence is likely to have a negative impact upon his life should he serve it to the maximum
 3. At the oral hearing of the appeal, the appellant appeared in person. The State was represented by Mr. Rogoncho, a State Counsel.
 4. Before the appellant canvassed his appeal, the State applied to the court to caution the appellant that it would be applying for enhancement of the sentence. The court duly warned the appellant who nevertheless chose to proceed with the appeal.
 5. In his oral canvassing of the appeal, the appellant stated that he had a difference with the complainant, leading to his prosecution. He urged the court to reduce the sentence as it was too harsh. He

then relied on the mitigation grounds appended to the appeal and which we have reproduced above.

6. For the State/Respondent, Mr. Rogoncho submitted that Section 348 of the Criminal Procedure Code bars anyone from appealing against a conviction entered on own plea of guilty of the appellant, as was the present case, where the appellant was convicted of defilement contrary to Section 8(1)(2) of the Sexual Offences Act No. 3 of 2006. The appellant had upon the guilty plea been rightfully sentenced to 20 years imprisonment. The State however wished to apply for enhancement of the sentence to life imprisonment as the appellant had been convicted of defiling a 6-year old boy. That act was beastly hence the 20-year sentence by the trial court was an absurdity. Mr. Rogoncho urged the court to enhance the sentence to life imprisonment.

7. In reply, the appellant pleaded with the court to reduce the sentence.

8. I have considered the appeal as well as the response by the State. I make the following view of the appeal.

9. The appellant has not disputed that he was convicted on his own plea of guilty to the offence of defilement. He only appeals against the sentence by the trial court which he wishes this court to reduce. On the contrary, the State/Respondent however thinks that the sentence being appealed against is lenient compared to the offence committed and has applied for enhancement of the same to life imprisonment.

1. I have perused the Sexual Offences Act and Section 8 (2) thereof prescribes a sentence of imprisonment for life for any person who commits an offence of defilement with a child aged eleven years or less. In the present case, the trial court upon convicting the appellant passed a sentence of 20 years imprisonment. In my reading of the law, this sentence is not in tandem with the punishment prescribed in Section 8 aforesaid. That sentence should ideally be enhanced to life imprisonment. However, I have in my perusal of the file noted that the medical report made the conclusion that there was no evidence of sodomy. In the event, the appellant may have made the uninformed decision to plead guilty when in the actual sense a plea of not guilty would have accorded him an opportunity to defend the charges and probably do so successfully. I would therefore in my discretion confirm the sentence passed by the subordinate court of 20 years imprisonment.

11. In the circumstances, the appeal fails and is hereby dismissed. The sentence of the subordinate court against the appellant is hereby confirmed accordingly.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 13th DAY FEBRUARY 2013.

**J.M. MUTAVA
JUDGE**