



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CRA NO.81 OF 2011

(Appeal from the conviction and sentence of Senior Resident Magistrate Hon. J. O. Magori in Sirisia court in criminal case no.533 of 2010)

FREDRICK SIMIYU SILALI ::::::::::::::::::::::::::::::

APPELLANT

~VRS~

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RESPONDENT

JUDGMENT

The Appellant pleaded guilty to the offence of defilement contrary to section 8 (1) and 8 (2) of the Sexual Offences Act whose particulars were that on 1/10/10 in Mt. Elgon District of the Western Province he intentionally caused his penis to penetrate the vagina of D.W.B a child aged 6 years. He was convicted and sentenced to serve 30 years in jail. He appealed against the conviction and sentence.

Regarding conviction, he complained that he pleaded guilty out of ignorance. Regarding sentence, he complained that it was harsh. He asked for a retrial. Mrs. Leting for the State opposed the appeal submitting that plea had been properly been taken and therefore that he had been properly been convicted. On sentence, counsel submitted that the same was illegal as section 8 (2) of the Act provided for a life term in jail.

I have looked at the record. The complainant was born on 20/10/2003 and was therefore just under 7 years. She was in nursery school. She was staying with her grandmother. On 1/10/10 she went to look for firewood in a coffee plantation about 50 metres from their house. While there she was confronted by the Appellant whom she knew. He ordered her to lie down. When she refused he forced her down and he penetrated her genital organ using his. When she tried to scream he held her by the throat. When he was through he ran away. She struggled and walked home. She was too scared to report the attack. On 3/10/2010, however, her grandmother noticed she was having difficulties in walking. When she sought to find out the incident was narrated to her. Members of public were mobilized and, after visiting the scene, they traced the Appellant at Chebunyinyi area. He was subjected to mob justice before being taken to Chesikaki Police Station. Both the complainant and the Appellant were examined at Sirisia Sub-District Hospital where the former was admitted for three days. Her medical record revealed she had lacerations on both labia and vaginal walls and was bleeding. Her hymen had been broken and she had a foul smelling whitish discharge. There are the facts that were narrated by the prosecutor and accepted by the Appellant following which he was convicted. He was a first offender and said nothing in mitigation.

The record shows that when the charge was first read on 4/10/2010 he accepted it but the prosecution did not have the facts ready and this led to adjournment to 7/10/2010. The charge was re-read and

explained to him. He accepted it following which the facts were narrated.

I am satisfied that the court followed the procedure of taking plea as outlined under section 207 of the Criminal Procedure Code and the direction given in the case of **Adan v. Republic [1973] EA 445**. The allegation that the Appellant was ignorant of what was going on is not borne out by the record.

I agree with Mrs. Leting that under section 8 (2) of the Act the trial court was under a duty to impose a sentence of imprisonment for life. The term of 30 years that was imposed was therefore illegal and is set aside and in its place the Appellant shall be in jail for life.

The result is that the appeal is dismissed.

Dated and delivered at Bungoma this 20th day of March, 2012.

A. O. MUCHELULE
JUDGE