



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 330 OF 2010

ABDULLAHI SHEIKH HUSSEIN.....
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

*(From the original conviction and sentence in Criminal Case No.1065 of 2010 of the
Principal Magistrate's Court at Garissa J.N. Onyiego– Principal Magistrate)*

J U D G M E N T

The appellant, **ABDULLAHI SHEIKH HUSSEIN**, was convicted for the offence of Defilement of a Boy under the age of 10 years contrary to **section 8(1) of the Sexual Offences Act**.

In his Petition of Appeal, the appellant had asserted that he had pleaded “Not Guilty” to the charge. He also accused the learned trial magistrate of failing to consider relevant aspects of the case, before rushing to sentence him to jail.

However, when the appeal came up for hearing, the appellant sought leave of the court, to be allowed to canvass his Amended Grounds of Appeal.

In the said amended grounds of appeal, the appellant indicated that his appeal was only limited to challenging the sentence of life imprisonment. In effect, the appellant abandoned any challenge that he may have earlier wished to raise, in relation to his conviction.

When canvassing the appeal, through a Somali interpreter, the appellant urged that the life imprisonment was “hard, harsh and excessive”. He therefore asked this court to reduce the said sentence appropriately.

In the appellant’s view, a more appropriate sentence is one that was non-custodial.

During the time that he had been in prison, the appellant says that he had been fully rehabilitated. He was therefore ready to adhere to the laws of the Republic of Kenya.

He also pointed out that his mother, who was blind, and his sister, who was crippled, both depended on him, as his father had passed away.

The applicant also told this court that he is a Somali national.

Finally, the applicant said that he only pleaded guilty because the police officer had promised to release him.

In answer to the appeal, Miss Maina, learned state counsel, submitted that the plea by the appellant was unequivocal.

The respondent also pointed out that the mitigation was essentially an explanation about what prompted the appellant to commit the offence. The appellant attributed his actions to the problems he was then facing.

Finally, the sentence was described as the only one prescribed by law. The respondent therefore invited me to dismiss the appeal.

As the first appellate court, I have re-evaluated the evidence on record. It shows that the plea was taken on 7th May 2010. The languages that were used during the said session were English and Somali.

When the charge and every element thereof were stated to the applicant, in the Somali Language, he was asked whether he admitted or denied the truth thereof. The appellant answered;

“It is true”

Thereafter, the learned trial magistrate warned the appellant of the consequences of pleading guilty to the offence for which he had been charged.

The court records show that the appellant insisted on pleading guilty after the charge was read out a second time.

It is then that the trial court entered a plea of guilty.

In those circumstances, I find no merit at all in the appellant’s contention that he had only pleaded guilty because a police officer promised to release him.

The facts of the case were that on 2nd May 2010, at about 10.00a.m, the complainant was playing with other children outside their home at a refugee camp. The complainant was 10 years old.

The appellant approached the boy and asked him to accompany him to the shop, but the boy refused.

The appellant then grabbed the boy, pulled him into the bushes nearby, where he undressed him. The appellant proceeded to defile the boy, by engaging in sexual intercourse through the anus.

When the boy was released, after the appellant had defiled him, he promptly reported the incident to his parents. A report was made to the police, and the boy was examined by Dr. Nailah Kassim.

The doctor found that the boy had a fresh tear wound on his anus. The wound was bleeding. Consequently, the doctor confirmed that the boy had been sodomised.

The boy gave the name of the appellant, resulting in his arrest.

The appellant confirmed to the trial court that those facts were true.

It is then that the appellant was convicted, on his own plea of guilty.

I am satisfied that the plea was unequivocal, and that the conviction was therefore sound.

In mitigation, the appellant prayed for forgiveness, saying that he would never repeat the offence again. He attributed his actions to the problems he was facing.

The learned trial magistrate noted that the appellant was remorseful. However, because the act was beastly, the court sentenced the appellant to life imprisonment.

The said sentence is lawful, and the reasons given by the trial court for imposing it, are justified.

In the event, there is no reason in law to warrant a reduction of the sentence. The appeal is dismissed.

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

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FRED A. OCHIENG
JUDGE