



REPUBLIC OF KENYA
IN THE HGH COURT OF KENYA AT KISII

Criminal Appeal 280 of 2010

DANIEL KOECH AMARE APPELLANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGMENT

(Being an appeal from the conviction and sentence of the Chief Magistrate's Court at Kisii, Hon. Njeri Thuku in Criminal Case No. 1614 of 2009 dated 15th October, 2009)

The appellant **Daniel Koech Omare** was charged with the offence of defilement contrary to section 8 (i) as read with section 8 (2) of the **Sexual Offences Act 2006**. According to the particulars on the charge sheet, he committed the offence on the 30th July, 2009 at 1.00p.m at Manyinkwa village, Mwembe location, Kisii Central District within Nyanza Province. He faced an alternative charge of indecent assault. The victim of the offence was **C. N** a girl aged 6 years. When called upon to take plea on 3rd August, 2009 the appellant pleaded guilty. However upon the facts being read to him, he stated that the facts were not entirely correct where upon the court entered a plea of not guilty. On the alternative count, he first pleaded guilty to the charge but changed his plea when the facts were read to him.

On 15th October, 2009 when the trial was set to commence the appellant asked that the charges be read to him afresh. The court duly indulged. Upon being asked to answer he stated "*It is true that I committed the defilement*". On the second count he answered "*It is true that I carried out the indecent act*".

A plea of guilty was entered on both counts. The facts were read out by the prosecution to which the appellant confirmed as true. He was then convicted on his own plea of guilty and sentenced to life imprisonment. In his mitigation before sentencing, he asked the court to forgive him. The sentence was passed on 15th October, 2009. On 5th December, 2010, the appellant filed his undated petition of appeal on the grounds that he was remorseful and that he was not aware of the consequences when he committed the offence due to illiteracy. He has also prayed that the court reduces his sentence which he deems harsh and excessive.

The appeal came before me for hearing on 27th February, 2012. The appellant gave the court written submissions. In summary, the submissions were a request to the court to reduce the sentence. Secondly, the appellant introduced a new ground of appeal to the effect that the prosecution did not call witnesses to give evidence linking him to the offence. He has also stated that his fundamental rights under Article 49 & 50 (4) of the Constitution were violated.

Mr. Mutai for the state opposed the appeal on grounds that having been convicted on his own plea of guilty, the appellant had no legal basis to appeal. On the sentence, **Mr. Mutai** submitted that life imprisonment was the only sentence provided in law under section 8 (2) of the **Sexual Offences Act**. Learned counsel further observed that the grounds of appeal were in the nature of further mitigation and could not qualify to be grounds.

I have perused the record. The facts of the case were that the appellant picked up the complainant, a minor aged 6 years, took her to his house next door, defiled her and put her in an empty 50 litre plastic container in a bid to hide her. He had locked the door from the inside. The house help under whose care the baby had been left raised an alarm and was assisted to break the door by a neighbour with whom they rescued the minor. These are the facts which were read to the appellant and which he accepted. I have found nothing in the record to show that the plea was not unequivocal. Infact the record shows that the appellant first pleaded guilty then changed his plea to not guilty then again at his own request had the charges read to him again and charged his plea to guilty. He cannot therefore now appeal against conviction. He is prevented from so doing by Section 348 of **Criminal Procedure Code**.

On sentence, I agree with the submission of the state counsel. The only sentence provided by law under section 8 (2) **Sexual Offences Act** for the offence is life imprisonment. I therefore affirm the sentence as pronounced by the trial court.

In sum and for the foregoing reasons I find that the appeal lacks merit. It is accordingly dismissed.

Judgment dated, signed and delivered at Kisii this 27th day of September, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

Daniel Koech Amare : appellant (present/absent)

..... :counsel for respondent (present/absent)

Edwin Mongare :court clerk

R. LAGAT-KORIR
JUDGE