



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 364 of 2010

GRANTON JANGANI NGOLO APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 451 of 2010 of the Resident Magistrate's Court at Wundanyi – F. MUNYI – RM)

JUDGMENT

The Appellant **GRANTON JANGANI NGOLO** was Convicted and Sentenced to fifteen (15) years imprisonment for the offence of Incest by male contrary to section 20 (1) of the Sexual offences Act No. 3 of 2006.

He had pleaded guilty to the charge and had been treated as a first offender.

Section 20(1) of the Sexual offences Act defines Incest by male persons thus;

“Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten (10) years.”

A perusal of the facts presented before the trial magistrate do not show the relationship between the Appellant and the complainant. The only reference to the relationship is found in line 7 of the proceedings wherein it is alleged that **“In June 2010, the Accused chased her away on the basis that she was not her daughter”**.

That in itself is not sufficient explanation as to the relationship between the appellant and the Complainant.

The offence of incest is primarily based on the relationship between the assailant and the complainant and the degrees of that relationship are found in section 20 (1) of the Sexual offences Act. The relationship must be established. In the present case it has not.

In accordance with section 354 (3) (a) (1). I hereby reverse the finding and Sentence and order that the Accused to be tried by a Court of Competent Jurisdiction.

Judgment read, dated and delivered in open court this **8th** day of **November, 2012**.

.....
M. MUYA
JUDGE

In the presence of:-

Mr. Gioche for the state

The Accused

Masundi – Court clerk