



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Appeal 289 of 2010

JAMES MBUTHIA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in criminal case Number 630 of 2008 in the Senior Resident Magistrate's Court at Gatundu – Mr. D.G. Karani (RM) on 10th May 2010)

JUDGMENT

1. The appellant, **James Mbutia Mwangi** was charged with defilement contrary to **Section 8(1)** as read with sub **Section (3)** of the **Sexual Offences Act**. The particulars of the offence were that on the 19th of August 2008 at Thika District of Central Province, intentionally and unlawfully committed an act which caused penetration to **PW1** H.M.M. of a boy aged fourteen years
2. He was alternatively charged with the offence of indecent assault of a boy contrary to **Section 164** of the **Penal Code**. The particulars of the offence were that on the same day and at the same place the appellant unlawfully and indecently assaulted H.M.M, a boy under the age of fourteen years by touching his private parts.
3. The appellant pleaded not guilty to the charges and after a full trial was found guilty of the charge of defilement of a boy contrary to **Section 8(1)** as read with **sub-section (3)** of the **Sexual Offences Act**. He was sentenced to serve twenty years imprisonment.
4. Being aggrieved by his conviction and sentence, the appellant appealed to this court, challenging the decision of the learned trial magistrate both on conviction and sentence. At the hearing of the appeal on the 11th November 2012 however, the appellant abandoned his appeal on conviction, and pleaded with the court to consider reducing the sentence imposed upon him.
5. The appellant relied on the following grounds in his appeal that can be summed up as follows:-
 - a) *That he pleaded not guilty at trial*
 - b) *That he was a victim of a very serious kidney problem as diagnosed by the doctor and had since undergone one operation.*
 - c) *That this disease deserved modern treatment of combination of effective drugs which he could not obtain while in prison.*

d) That he was married with two children and was the sole bread winner to his parents.

6. He submitted that he had been in prison since 10th May 2010 when he was convicted and sentenced to twenty years imprisonment. That he had since learnt his lesson and had realized the folly of his actions. That he had suffered illness even during the trial, and had since undergone the first operation and was currently on renal treatment. That he also suffered from asthma for which he was being attended to at Kenyatta National Hospital. He told the court that he was now rehabilitated and was ready to support his family if released.

7. The learned state counsel, Mr. Mulati, in opposing the appeal on behalf of the state submitted that the sentence imposed was commensurate with the offence of defilement of a boy contrary to **Section 8(3)** of the **Sexual Offences Act** which provided for a minimum sentence of 20 years imprisonment.

8. He further submitted that the appellant had not availed any documentation in support of his ailment and that even then the prison authority availed prisoners medical facilities and referred them to Kenyatta National Hospital for treatment where necessary. He submitted that the appeal was untenable and ought to be dismissed.

9. I have considered the submissions on sentence made before me by the appellant and I do note his health challenges. I have also considered the response made by Mr. Mulati on behalf of the State, and the facts of this case. In the circumstances of this case, the sentence of twenty years imprisonment imposed by the learned trial magistrate is the minimum sentence provided by law, in the event of a conviction. I shall not therefore interfere with it.

10. The appeal is therefore lacking in merit and is accordingly dismissed.

SIGNED DATED and DELIVERED in open court this **8th** day of **November 2012**.

L. A. ACHODE
JUDGE