



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL APPEAL 93 OF 2009**

**DOMINIC NDWIGA NJURA.....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*From original conviction and sentence in Cr. Case No. 96 of 2007 at the Senior Principal Magistrate's Court at Embu*

**J U D G M E N T**

Dominic Ndwiga Njura the Appellant herein was charged with the offence of *incest contrary to section 20(1) of the Sexual Offences Act No.3 of 2006*.

The particulars were as follows;

**DOMINIC NDWIGA NJURA:** On the 12<sup>th</sup> day of January 2007 at Gatunduri village, Kiangima sub-location, Mbeti North Location in Embu District within Eastern Province intentionally and lawfully had sexual intercourse with a minor namely S.G aged 11 years who is his step-sister.

The Appellant pleaded guilty to the facts and was sentenced to life imprisonment. And being aggrieved by the finding of the learned trial Magistrate he has appealed against both conviction and sentence. He raised the following grounds;

- 1) That the Appellant pleaded guilty to the charge.***
- 2) That the Appellant's age which was 17 years was not considered whereby the Appellant was a law illiterate and incapable of understanding the Court procedures in such a matter.***
- 3) That the trial Court did not warn the Appellant of the sentence he was going to face if found guilty of the offence he had been charged with.***
- 4) That the Appellant was sentenced immediately he entered his plea of guilty without given time to reflect on the charges and its implications to his young life before convicting him to serve a life sentence.***
- 5) That the Appellant's mitigation was misunderstood by not being given enough time to explain what really happened and by so doing he was denied his constitutional right of cross examining witnesses on what transpired to prove his innocence.***

**6) That the sentence imposed is harsh and excessive.**

When the appeal came for hearing the Appellant presented written submissions. In his submissions he has tried to explain what happened, showing that he never committed the offence. And that its the Prosecution that had misled him into admitting the offence. He says he was denied an opportunity to cross-examine witnesses.

The appeal was opposed by the State. She stated that age of the Appellant was never an issue in the lower Court. And that since he pleaded guilty witnesses would not be called.

This is a matter where the Appellant admitted the charge. He has in one of his grounds stated that he was 17 years at the time of the alleged offence. This Court did order on 28/11/2012 that the Appellant be taken for an age assessment by a Medical Officer at Provincial General Hospital Embu. There is a report filed herein showing that indeed he was examined by Dr. Ndungu a dental officer who found him to be over 24 years of age.

Putting his age at 24 years on 30/11/2012 what would have been his age on 12<sup>th</sup> January 2007? He was over 18 years at the time of the offence. That ground is therefore dismissed. He also complains that he was not allowed to call witnesses. That ground fails because he pleaded guilty to the charge.

The record shows that the charge was read to him in English and interpreted in Kiembu. And he admitted the charge. Facts were read to him. The complainant was examined and found to have a torn tender hymen. A P3 was produced to that effect (EXB 1). He admitted all those facts. He was given an opportunity to mitigate which he did. The facts indicate that the Appellant and the complainant are a step brother and sister. He admitted that. There is evidence of the sexual offence. The Appellant says he was not told of the consequences of the plea of guilty. Warnings are given to those who plead guilty to capital offences carrying a mandatory death sentence. And had he required time to reflect on what had transpired there was nothing that stopped him from making that request to the learned trial Magistrate.

The plea was unequivocal and the sentence is as provided by the law. I have no reason to interfere with it. For those reasons I find no merit in the appeal which I dismiss. I confirm the conviction and sentence.

**DATED AND DELIVERED AT EMBU THIS 28<sup>TH</sup> DAY OF DECEMBER 2012.**

**H.I. ONG'UDI  
J U D G E**

In the presence of;

M/s Macharia for State

Njue – C/c

Appellant