REPUBLIC OF KENYA

High Court at Kitale

Criminal Appeal 58 of 2009

GEOFFREY MAKOKHA.....APPELLANT.

VERSUS

REPUBLIC.....RESPONDENT.

(Being an appeal from the original conviction and sentence of T.A. Odera – SRM

in Criminal Case No. 2373 of 2009 delivered on 21st October, 2009 at Kitale.)

J U D G M E N T

Geoffrey Makokha (herein, the appellant), appeared before the Principal Magistrate at Kitale charged with the offence of defilement contrary to section 8 (1) read with section 8 (2) of the Sexual Offences Act.

Alternatively, the appellant was charged with indecent act with a child contrary to section 11 (1) of the Sexual Offences Act.

It was alleged that on the 7th July, 2009 at Bidii farm Trans Nzoia, the appellant intentionally caused his male genital organ to penetrate the genital organ of JN, a child aged six (6) years. Alternatively, it was alleged that the appellant intentionally and unlawfully caused contact between his genital organ and the genital organ of the said child.

The appellant entered a plea of not guilty for both counts. The trial commenced on 13th August, 2009 with the testimony of the complainant child **JN (PW1)** and her mother, **EO (PW2).** Thereafter, the case was adjourned to the 16th September, 2009 when the clinical officer, **Linus Ligare (PW3)** and the investigating officer, **P.C. Paul Kamau Mwangi (PW4)** testified. The case for the prosecution was closed at that point.

The appellant was produced in court on 8th October, 2009 and informed that the hearing of the case was to continue on 11th November, 2009 and that the matter would in the meantime be mentioned on 21st October, 2009.

On 21st October, 2009, the appellant appeared in court and indicated that he wished to change plea.

Accordingly, the charge was read over and explained to him in the Kiswahili language which he understood. He pleaded guilty and the facts were narrated to him by the prosecution. He accepted the correctness of the facts and was consequently convicted on his own plea of guilt. He was thereafter

treated as a first offender but had nothing to state in mitigation. A sentence of twenty (20) years imprisonment was imposed upon him by the learned trial magistrate.

This appeal is essentially on sentence although the written submissions presented by the appellant related more or less to an appeal on conviction and sentence.

Be that as it may, the grounds in support of the appeal filed herein on 4th November, 2009 confirm the appeal is on sentence only. In that regard, the principles upon which an appellate court can interfere with the discretion of a trial court as regards sentence are well settled. The appellate court can only interfere where the trial court in assessing the sentence has acted on wrong principles or has imposed a sentence which is manifestly inadequate or manifestly excessive (**see, Diego vs. Republic (1985) KLR 621).**

Herein, the appellant does not say in his grounds of appeal that the sentence is either harsh or manifestly excessive or that it is unlawful. He merely talks about having been intimidated and having a brain illness yet the record of the lower court does not indicate as much.

Most of the grounds of the appeal are irrelevant for the purposes of this appeal. Perhaps, the only relevant ground is ground two (2) in which the appellant alleges that the plea was not taken properly. However, the record of the trial court clearly shows that the plea which led to the conviction and sentence of the appellant was properly taken in accordance with the requirements prescribed in the case of **Adan vs. Republic (1973) EA 445.** Consequently, the appellant's conviction on his own plea of guilt cannot be quashed on the basis of vital procedural errors. No such errors existed herein.

All in all, this appeal is unmerited. The respondent's objection to the same is hereby sustained and its contention that the sentence imposed was unlawful must be upheld for the simple reason that the child complainant was six (6) years old at the time of the offence.

Section 8 (2) of the Sexual Offences Act provides:-

"A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life".

Yet, in this case, the trial court sentenced the appellant to imprisonment for a period of twenty (20) years. This was clearly erroneous. The appellant deserved life imprisonment as provided by section 8 (2) of the Sexual Offences Act.

Consequently, the sentence of twenty (20) years imprisonment imposed upon by the trial court is hereby set aside and substituted with a lawful sentence of life imprisonment. Other than the alteration in the sentence, the appeal is dismissed.

[Delivered and signed this 19th day of December, 2012.]

J.R. KARANJA.
JUDGE.

Order:- A copy of the judgment be supplied to the appellant.

J.R. KARANJA.
JUDGE.