



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HCCR NO. 40 OF 2008

(From: Original Criminal Case No. 1949 of 2006 TIGANIA; G. OYUGI SRM)

LESIT J.

JOSEPH MURUGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant was charged with one count of Attempted Rape Contrary to Section 4 of the Sexual Offences Act (hereinafter the Act.) In the alternative count the appellant was charged with Indecent Assault contrary to section 9 of the Act. The appellant was convicted of the main count and sentenced to 15 years imprisonment.

The appellant was aggrieved by the sentence and therefore filed this appeal. In the filed Petition of Appeal he pleads for leniency on grounds he is remorseful and repentant for the offence, that he was a first offender, a family man and sole breadwinner of his family.

In his submissions in court the appellant urged that he was 50 years old, that his family lived in a rented place and that the sentence was excessive.

Mr. Kimathi from the State opposed the appeal on grounds the appellant was sentenced to the minimum sentence for the offence charged and that due to the circumstances of the offence the sentence should be

confirmed. Counsel urged that the appellant was pretending to offer spiritual guidance when the offence was committed.

I have considered the appellants appeal against sentence. The offence for which the appellant was convicted calls for a sentence of not less than five years but which may be enhanced to life imprisonment.

Before sentence the learned trial magistrate observed:

“SENTENCE

Mitigation considered. The offence is serious and accused person is sentenced to serve 15 years imprisonment.”

The prosecutor of that court informed the trial magistrate that the appellant was a first offender. Nowhere did the learned trial magistrate indicate that he took that into consideration before passing sentence. There were no other considerations noted except the appellant’s plea for leniency.

I considered the fact the appellant was a first offender. I also considered the circumstances of the offence. There is a bit of contradiction between the evidence of the complainant and her father PW2. According to the complainant the appellant held her by the neck, and when she screamed she was rescued before the appellant did anything else. PW 2 exaggerated the facts when he said he found the appellant on top of the complainant.

PW5 corroborated the complainant’s testimony that she had been injured on her neck. This is not to mean that the offence was not proved. There was a clear intention to forcefully have carnal knowledge of the complainant established through the complainant’s evidence that the appellant had suggested they have sex in order to cure her sickness. That was just before he jumped on her and held her by the neck injuring her.

The circumstances of the offence are bad given the complainant’s youthful age and fact she was a student.

Taking all into consideration, including the sentence prescribed under S.4 of the Act, I will allow appellant’s appeal by reducing the sentence from 15 years in prison and in substitution thereof reduce it to ten (10) years imprisonment from the date of sentence in the lower court.

Those are my orders.

Dated, Signed and Delivered at Meru this 26th day of May, 2011.

LESIIT, J.

JUDGE