



REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL NO.81 OF 2009

(Appeal arising from original WBY CR. NO.442 of 2009)

N I.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant N I was charged and convicted of two counts of attempted incest contrary to section 1 (1) of the Sexual Offences Act. He was sentenced to serve ten (10) years imprisonment on each count both sentences to run consecutively. He now appeals against the sentence.

In his amended grounds of appeal the Appellant pleads with the court to consolidate the two ten (10) year imprisonment sentences. For the Appellant to serve the sentences consecutively it will mean spending twenty (20) years in prison which he considers harsh. The Appellant also states that he wishes to go home and continue with his education since he is only aged 20 years.

The appeal was opposed by the state. Mr. Okeyo urged the court to uphold the sentences to run consecutively because the victims were two minors who are daughters of the Appellant's brother.

The Appellant pleaded guilty to the charges. The facts of the case were read to the Appellant and he admitted them. The facts are that the parents of the victim girls aged 3 ½ years and 7 years were left with the accused when their parents went for a visit to Eldoret. The Appellant placed the girls at separate times on the sofa set, undressed them and attempted to defile them. It was not possible to penetrate them and he left them. He gave each of them some hard snack popularly known as "*Kangumu*" as an inducement not to tell anyone what had happened. After their parents returned home, they learnt of what had happened to their children. The matter was reported to the police. Medical evidence was in support of the charges against the Appellant. He admitted the facts of the case and was convicted. The record shows that the plea was unequivocal and that all the laid down principles were complied with. The accused complains of the sentence only. It is clear that each offence was committed on separate complainants. The only issue to decide in this appeal is whether the sentences should run concurrently.

The Appellant was charged in one file with two separate offences. There are two separate complainants in each count. The offences were committed separately but in the same transaction. I do not find any fault with the order of the trial magistrate ordering that the sentences run consecutively. However since the offences were committed almost simultaneously at the same place, I find it appropriate in the interests of justice that the sentences run concurrently. I hereby so order.

The convictions remain undisturbed. The appeal is therefore allowed in terms of the amended grounds of appeal.

F. N. MUCHEMI
JUDGE

Judgment delivered in open court this 19th day of July, 2011 in the presence of the Appellant and the state counsel.

F. N. MUCHEMI
JUDGE