



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 608 OF 2007

SAMUEL KAMAU JOSEPHAT..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(From the original conviction and sentence in Criminal Case No. 6741 of 2006 of the Chief Magistrate's Court at Kibera by Wasilwa (Mrs.) – Principal Magistrate)

JUDGMENT

The appellant, **SAMUEL KAMAU JOSEPHAT** was convicted for the offence of Defilement **contrary to section 8(1) as read with Section 8 (4) of the Sexual Offences Act**. He was then sentenced to 15 years imprisonment.

Although the appellant appeared to challenge both his conviction and the sentence, when he lodged his appeal; he told this court that he was only challenging the sentence. Indeed, he filed an “Amended Supplementary Grounds of Appeal”, on the day he came to argue his appeal. In the said supplementary grounds, he made it clear that he was only challenging the legality of the sentence that was handed down to him.

He then proceeded to ask the court to reduce the sentence, on humanitarian grounds. He invited this court to consider his mitigation, which he had presented to the trial court.

The appellant asked me to give consideration to substituting the sentence with probation.

Essentially, the appellant was seeking clemency, so that he could be given an opportunity to go and look after his mother. His mother is said to be a diabetic, and she depended on the appellant.

The appellant's father had, reportedly, died in 2002.

That is what the appellant had stated in his written submissions. However, when he addressed the court, he said that his mother had passed away. He was therefore now asking for an opportunity to re-build his life.

Mr. Mulati, learned state counsel, opposed the appeal. He said that the sentence was too lenient to be reduced.

There is no doubt that the sentence of 15 years imprisonment is lawful. Since it was passed, the appellant has been in jail for just over 4 years.

It is understandable that he should desire to re-build his life.

However, I also note that he defiled a young girl, who was on her way home, from a church service. He strangled her on the back seat of the matatu he was working in. He was a tout in the said matatu.

When all the other passengers had alighted, the complainant remained alone, as she had not yet reached her destination. It is then that all hell broke loose, and the appellant molested her.

He then threw her out from the matatu before the driver drove-off fast. Clearly, the driver had a hand in what was happening. I say so because as the appellant was molesting the complainant, the driver raised the volume of the vehicle radio.

In other words, the commission of the offence was a calculated move. It left the victim physically and mentally bruised. As Dr. Ketra Muhombe observed, the complainant was tearful and emotionally distressed. The doctor prescribed counseling, among other medical interventions.

I have highlighted these issues because Justice is a two-way traffic. It cannot look at only the perpetrator of the crime. It must also take a keen interest in the victim.

Having given due consideration to the appellant's plea, as well as the circumstances of the victim, I find that the interest of justice will be best served if the appellant served the sentence which was handed down to him. There is no reason to warrant its reduction.

Accordingly, the appeal is dismissed. I uphold both conviction and sentence.

Dated, Signed and Delivered at Nairobi, this 9th day of November, 2011

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FRED A. OCHIENG
JUDGE