



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**

**Criminal Appeal 130 of 2007**

*(From original conviction and in Criminal Case No. 1045 of 2007 sentence of the Senior Resident Magistrate's Court at Kilifi before Hon. C. Obulutsa- RM)*

**K.F.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

K.F (the appellant) was convicted on a charge of incest by a male person contrary to section 20 (1) and 22 (2) of the Sexual Offences Act 2006.

He was sentenced to serve 20 (twenty) years imprisonment.

He now appeals against both conviction and sentence. When plea was taken (the charge having been read out to him in Kiswahili) his response was “true”

He challenges the conviction on grounds that:

- (1) The trial magistrate ought to have considered that he was a first offender.
- (2) The sentence was harsh and excessive.

From the lower court's record, the facts as narrated to the court were that on diverse dates between June and July 2007 at M, the appellant and his 15 year old half sister had sexual intercourse with her on three different occasions. The issue was discovered by his brother and reported to the village elder. The girl had also conceived and was taken to hospital and confirmed to be 15 (fifteen) weeks pregnant. Appellant confirmed the facts as being correct.

The appeal is opposed by the State.

Basically his appeal is on sentence.

He has filed written submissions where he now introduces a new angle to the whole matter saying his case was based on family/domestic feuds relating to land and he was simply the target – these are extraneous issues which:

- (a) Do not form his grounds of appeal.
- (b) His plea was unequivocal and its rather late in the day to attempt to introduce the matter at the appeal stage.
- (c) From the court record, there is nothing whatsoever to suggest that appellant was coerced or under duress to plead guilty.

Under section 20(1) of the Sexual Offences Act,

***“Any male person who commits an indecent act or an act which causes penetration with a female person, who to his knowledge is his daughter, granddaughter, sister, niece, mother, aunt or grandmother, is guilty of an offence termed incest, and is liable to imprisonment for a term of not less than ten years Provided that if it is alleged in the information or charge and proved that the person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.”***

The appellant falls within the category envisaged by this proviso hence the 20 year sentence meted.

The Counsel for the State, Miss Waigera, urged the court to find that the sentence is appropriate taking into consideration the nature of the offence and the maximum sentence provided by law – I concur - indeed I find no reason to warrant interfering with the sentence, it is legal and I confirm it.

The upshot is that the appeal has no merit and is dismissed.

Delivered and dated this 13<sup>th</sup> day of **May 2010** at Malindi.

**H. A. OMONDI**

**LADY JUSTICE**

Miss Waigera for State

Accused in person

Court clerk – Randu English/swahili