



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 105 of 2009

1. **Criminal Law**
2. **Criminal Appeal**
3. **Subject of Subordinate Court case:-**

Incest by male contrary to Section 201(1) Sexual Offences

Act No.3/2006

Particulars of offence

On diverse dates between December 2007 to June 2009 at Location in Lugari District within Western Province unlawfully and intentionally did an act ... (to) M.C. a girl aged 13 years who is to [his] knowledge [his] daughter.

Plea

- (i) 6th July 2009
- (ii) Guilty
- (iii) Facts read
- (iv) P.3 revealed daughter/victim 8 months pregnant.
- (v) Facts admitted
- (vi) Mitigation interalia

“it is the devils work that made me defile my child”

Sentence

Life imprisonment

4. **Appeal** - 10th July 2009

- (a) Appeal admitted 23rd November 2009 (Mwilu J).
- (b) Petition
 - i). Pleaded guilty because he was confused
 - ii). Not aware of the repercussion of pleading to the charge
 - iii). Matters fabricated but now prays for a retrial.
 - iv). Appellant present during appeal
 - v). Had disagreement with wife

5. **In reply by State**

- (i) Plea was correctly taken
- (ii) No error or defects on face of record
- (iii) **Admissions in mitigation “the devil made (me) defile my child”**

6. **Held:-**

- a). Plea correctly taken
- b). Conviction and admission correctly recorded
- c). Deterrence basis of sentence by Trial Magistrate
- d). Appeal dismissed

7. **Case Law** Nil

8. **Advocate**

- (i) Mr. A.O.Oluoch instructed from the office of the Attorney General for the State/Respondent.
- (ii) Paul Chimwami, Appellant in person
- (iii) Advocate – nil

P.C.AAPPLICANT
=VERSUS=
REPUBLIC RESPONDENT

(Appeal from the decision of Alego Esq. Senior Resident Magistrate delivered on 6th July 2009 at Eldoret on conviction and sentence in Eldoret CMCC NO. 5058/2009)

JUDGMENT

I. Introduction

1. Paul Chimwani Andore appeared before the Senior resident Magistrate on 6th July 2009 charged with the following offence:-

Incest by male contrary to Section 20(1) Sexual offences Act No. 3/2006

Particulars of Offence

“On diverse dates between

December 2007 to June 2009 in Lugari District within Western Province

unlawfully and intentionally did an act --- to M.C. --- a girl who is to [his]

knowledge [his] daughter”

2. The plea was taken on the same day, and a plea of guilty was entered. The facts of the case was duly read and accordingly to law, a P.3 form was produced to reveal that the minor/victim and daughter was 8 months pregnant.

3. In mitigation P.C.A, interalia, stated **“it is the devil’s work that made me defile my child”**

4. The trial Magistrate imposed a sentence of **“Life Imprisonment”**. This was on the grounds that a deterrence sentence was appropriate.

II. Appeal

5. Being dissatisfied with the conviction and sentence P.C.A (herein referred as the Appeallant) appealed to this High Court of Kenya at Eldoret on 10th July 2009. His Appeal was admitted to hearing on 23rd November 2009 (Mwilu J).

6. In his Petition of Appeal the Appeallant stated that:

(i) **He pleaded guilty because he was confused.**

(ii) **He was not aware of the repercussions of pleading to the charge**

(iii) **The matters before Court was a fabrication but he now prays for a retrial.**

(iv) **He had a disagreement with his wife.**

7. In reply to this Petition, the State was able to show that the plea was correctly taken. There was no error or defects on the face of the record. That the admission in mitigation of the words **“the devil made (me) defile my child”** is sufficient to show the guiltiness and admission to the offence.

III. Opinion

8. The procedure of taking plea herein was according to law. The Charge was read to the Appeallant in a language he understands. He admitted the same. The facts were re-read to him and he again admitted the facts before Court as being correct; namely from December 2007 he had been sexually assaulting the minor.
9. The P.3 from revealed that the minor, a daughter to the Appeallant conceived in August 2008. She was eight months pregnant. The teachers at school on investigating who got her pregnant were informed it was her father and Appeallant in this case.
10. I do not see therefore a likelihood of fabricated evidence by the prosecution. I would reject this point of argument in the petition.
11. Further the Appeallant argued that the cause of his being in Court is the fact that his wife and he quarreled. This was not part of the petition of Appeal which the Appeallant is bound to. This was never raised before the trial magistrates in mitigation and or during the plea. The facts of the case clearly stated that his wife was notified of the incident that took a considerable time. She reported to the police.
11. The minor had been informed by the Appeallant not to tell of the incident. She conceived through normal conception according to the doctors.
12. Where a child in this case, a 13 years old girl is impregnated by her father, she will be traumatized all her life. She may have to bear a child formed out of incest. She was taken advantage of in a situation that she may not have known what was being done to her was wrong.
13. I do note in the aspect of conviction that this was sound and I would not interfere with it. As to the issue of sentence, the Trial Magistrate gave the same on grounds of deterrence. I would not interfere with this. I accordingly uphold the sentence as given.
14. This appeal is dismissed and the Appeallant to continue with his sentence.
15. There will be 14 days right of appeal

DATED THIS 5TH DAY OF JULY 2010 AT ELDORET

M.A. ANG'AWA
JUDGE.

Advocate

- (i) Mr. A.O. Oluoch instructed from the office of the Attorney General for the State/Respondent.
- Present
- (ii) P.C.A in person - Present
- (iii) Advocate – nil