



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 113 OF 2009

RICHARD EVANS WAFULA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal against both conviction and sentence in Eldoret Chief Magistrate's Court Criminal Case No. 4229/2009 delivered by HON. ATIENO ALEGO (SRM) on 10th July 2009)

JUDGMENT

RICHARD EVANS WAFULA pleaded guilty to defiling a girl aged seven (7) years. In mitigation he said that he did it because the parents of the child were not paying him. He was convicted and sentenced to life in prison. He now brings this appeal on the grounds that he was mentally ill at trial and did not understand court proceedings during plea and did not know the consequences of a plea of guilty and that he was threatened into pleading guilty. He then submitted that he needed a re-trial as he was just told to plead guilty and he did just that. He said that the case arose out of vendetta when he asked for his salary arrears.

Opposing the appeal Mr. Kabaka for the Republic submitted that the appellant's was a plea of guilt and it could not be appealed from.

I have evaluated the proceedings. The plea of guilty was clearly an unequivocal one and anything now said by the appellant is a sorry afterthought. The appellant did not raise the issue of being forced to plead guilty by policemen to the trial court. He did not mention to that court that he was threatened for had he done that the court would surely have assisted him and failing which this could would now assist him.

The provisions of Section 348 of the Criminal Procedure Code prohibit an appeal from a plea of guilty in the following words:-

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

There then the appeal on conviction falls flat. As to sentence, the appellant was given the minimum sentence allowable by the Sexual Offences Act for the offence he readily admitted to have committed in retaliation to the parents of the minor for not paying his salary for seven months.

I find no basis whatsoever for a retrial in the circumstances of this case.

This appeal is, for the above reasons, totally devoid of merit and I accordingly hereby dismiss it.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 14TH DAY OF OCTOBER 2010.

P. M. MWILU
JUDGE

In the presence of:-

Present - Appellant

Kabaka - Counsel for the Republic

Court Clerk - Andrew Omwenga

P. M. MWILU
JUDGE