

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 62 of 2008

JOHN RUKWARO MACHARIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

John Rukwaro Macharia, the appellant herein was charged with two counts. The first count was the offence of attempted rape contrary to section 4 of the Sexual Offences Act of 2006. The particulars of the offence state that on the 27th day of February 2008 at around 2.00 a.m. at Laikipia West District within Rift Valley Province unlawfully attempted to have carnal knowledge of Judy Wairimu Kirori without her consent.

The appellant was also charged with the offence of **stealing** from the person, **contrary to section 279(a) of the Penal Code**. The particulars of the offence state that on the 27th day of February 2008 at around 2.00 a.m. at Laikipia West District within Rift Valley Province, stole Kshs 5,060/= in cash the property of J W K from the person of the said J W K. The appellant pleaded guilty to the first count. He was convicted and sentenced to ten years imprisonment. The records before this court do not show what happened to the second count. The appellant has now appealed against the sentence.

On the part of the State Mr. Mugambi submitted that the plea was properly taken before the trial magistrate. Counsel left the issue of sentence to the discretion of the court. I have gone through the proceedings. The appellant pleaded guilty. The plea is unequivocal because the appellant spoke in Kiswahili when he responded to the charge. On the issue of sentence the principles to bring to bear on whether or not to alter a sentence passed by the trial court were well articulated in the case of **Ogalo s/o Owuor [1954] E.A.C.A at page 270** where the Court of Appeal held as follows: -

“The court does not alter a sentence on a mere ground that if the member of the court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless it is evident that the judge acted upon some wrong principle or overlooked some material facts if the sentence is manifestly excessive in view of the circumstances of the case.”

The sentence provided under **Section 4 of the Sexual Offences Act** ranges from 5 years to life imprisonment. Ten (10) years is within the range provided in the law. It is not manifestly excessive taking the circumstances of this case. I find no justification for interfering with the discretion of the learned trial magistrate in sentencing. I find no merit in this appeal. I uphold the decision by the trial court and confirm the sentence. The appeal is dismissed.

Judgment read and signed on 8th day of April 2009

M. KOOME

JUDGE