

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Appeal 77 of 2005

HASSAN MAKOKHA.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G E M E N T

The appellant was charged with the offence of abduction of a girl under the age of 16 years without the consent of her parents contrary to *section 143* of the Penal Code. The appellant pleaded guilty to the charge and was sentenced to serve *seven (7)* years imprisonment.

The appellant preferred this appeal and during the hearing he relied on his grounds of Appeal which are that the *seven (7)* years sentence is too harsh and excessive and that he is a first offender.

Mr. Karuri, learned State Counsel did not oppose the appeal. He submitted that the trial magistrate erred in law as the offence the appellant was facing is a misdemeanor and attracts a maximum sentence of two years under *section 36* of the Penal Code.

Section 256 of the Penal Code defines abduction as follows:-

“Any person who by force compels or by any deceitful means induces, any person to go from any place is said to abduct that person.”

Section 257 provides that punishment for the felony of abduction is seven years. *Section 143* under which the appellant was charged with in 2005 was repealed in 2006.

According to the facts of the case, the appellant took away one Jane Malala who was *13 years*. This was against the wish of the girl’s parents. The appellant pleaded guilty to the charge. He was sentenced on the same date he was charged, 24th June, 2005. The appellant has now served four years. This is enough punishment. I do reduce the sentence of seven years to *four years and two months*. The appellant has by now served the full sentence and shall be set at liberty unless otherwise lawfully held.

Dated, delivered and signed at Kakamega this 30th day of July, 2009

SAID J. CHITEMBWE

J U D G E