



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL APPEAL 522 OF 2004

(From original conviction and sentence in Criminal Case No.20865 of 2003 of the Chief Magistrate's Court at Makadara – .R. Nyakundi SPM)

ALBERT MBAI MUTUAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appeal is on sentence only. The Appellant was convicted on his own plea of guilty for the offence of rape contrary to Section 140 of the Penal Code. Upon conviction he was sentenced to life imprisonment.

The Appellant was aggrieved by the sentence and hence lodged the instant Appeal limited to sentence only. In his Petition of Appeal, the Appellant lamented that the sentence of life imprisonment was too harsh, that he was a first offender and pleaded guilty to the charge, at the first instance. When the Appeal came up for hearing, the Appellant in his oral submissions reiterated the grounds set out in the Petition of Appeal. Mrs. Gakobo, Learned State Counsel who appeared for the State, conceded to the Appeal on sentence. Counsel submitted that the sentence imposed though legal was however harsh considering that the Appellant pleaded guilty and he was a first offender. There was no explanation as to why the trial Court imposed on the Appellant the maximum sentence.

As it has been constantly stated sentencing is an exercise in discretion by the sentencing Court. Accordingly unless it is shown that the discretion was not exercised judicially but rather capriciously, the Appellate Court would rarely interfere with such exercise in discretion. Further it has also been held that the Appellate Court would only interfere with the sentence imposed if it is demonstrated that it is illegal, manifestly harsh and excessive, that in arriving at the sentence, the sentencing Court took into account irrelevant or extraneous matters and failed to take into account relevant matters.

The sentence imposed on the Appellant no doubt is legal. However considering that the Appellant was a first offender and not a serial rapist, the maximum sentence was uncalled for. The sentencing notes of the Learned Magistrate are so sketchy and did not justify the need for a maximum sentence.

The fact that the Appellant pleaded guilty to the charge at the first instance and thus saved the Court its valuable time should have held him in good stead. No doubt the sentence imposed was manifestly harsh and excessive as to amount to miscarriage of justice. I would in the premises interfere with the sentence to the extent that I will reduce it to fifteen (15) years. Accordingly the Appellant shall now serve fifteen

(15) years imprisonment effective from the date of conviction.

Dated at Nairobi this 28th day of February, 2007.

.....

MAKHANDIA

JUDGE

Judgment read, signed and delivered in the presence of:-

Appellant

Mrs. Gakobo for State

Erick Court Clerk

.....

MAKHANDIA

JUDGE