



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 530 of 2005

**(From original conviction (s) and Sentence(s) in Criminal Case No. 6926 of 2005 of the
Chief Magistrate's Court at Makadara (Mrs. Nzioka – PM))**

GEORGE MWAURA NJOKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

GEORGE MWAURA NJOKI was convicted on his own plea of guilty to one charge of DEFILEMENT OF A GIRL contrary to Section 145(1) of the Penal Code. The particulars of the charge alleged;

“On 29th day of October at [Particulars withheld] village, Nairobi, within Nairobi Area Province, had unlawful carnal knowledge of M W I a girl under the age of 16 years”.

The Appellant was sentenced to life imprisonment with hard labour. Being aggrieved by both the conviction and sentence the Appellant lodged this appeal. The Appellant appeals against the conviction on grounds that he did not know the Court proceedings and that the court owed him a duty to warn him of the consequences of pleading guilty to the charge. On the sentence the Appellant urged the court to consider that he had contracted epilepsy and was crippled on one hand and so life in prison was unbearable due to his conditions. Secondly the Appellant urged the court to find that the sentence was excessive, harsh and relentless and being an orphan with other siblings to care for, a non custodial sentence should have been imposed.

Mrs. Obuo, learned counsel for the State submitted that the plea was properly taken and that in the circumstances the Appellant could only challenge the sentence. Counsel further submitted that as far as the sentence was concerned, it was not excessive given the sentiments expressed by the learned trial magistrate before passing sentence. The sentiments, **Mrs. Obuo** continued included the fact that due to the high incidence of the defilement cases a deterrent sentence was deserved. **Mrs. Obuo** urged the Court not to allow the appeal against the sentence in the circumstances.

I have carefully considered this appeal, all the grounds raised together with the manner in which the plea was taken. On my own evaluation of the manner in which the plea was taken, together with the facts of the case, as led by the prosecution, and the Appellant's responses to both the charge and its particulars and the facts, I am fully satisfied that the plea of guilty was unequivocal. The Appellant fully appreciated the charge and fully understood what it was that he had been alleged to have done. The responses clearly prove that he was fully admitting the offence. The Appellant states that the learned trial magistrate should have warned him of the consequences of pleading guilty. There is no such a requirement in law and an unequivocal plea of guilty cannot be rendered defective merely because of lack of warning of the

kind of sentence one stood to face. Such a caution is only required to be given to persons pleading guilty to a capital charge whose consequence is mandatory death sentence. Defilement contrary to **Section 145(1)** of the **Penal Code** does not carry a mandatory sentence nor a mandatory death sentence. I agree that the sentence for the offence includes life imprisonment but there is a clear distinction between that and a capital sentence. I do not therefore find any merit in the appeal against the conviction on the grounds advanced. The plea of guilty entered was unequivocal and in the circumstances no appeal can lie against it.

See **Section 348** of the **Criminal Procedure Code**.

On the sentence I note that the Appellant is crippled on one hand and I have also considered his home circumstances. That does not however render the offence committed any less serious. However, since the Appellant pleaded guilty to the charge showing his remorse and also saving the court precious time, taking into account he is a young person, a life sentence was in the circumstances both harsh and excessive. I will allow the appeal against the sentence by setting aside the sentence of life imprisonment and in substitution thereof order a sentence of 15 years imprisonment from the date of the sentence in the lower court. Subject to that order the Appellant's appeal against conviction fails and is dismissed.

Dated at Nairobi this 18th day of April 2007.

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LESIIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant present

Mrs. Obuo for State

Tabitha: CC

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DULU

JUDGE