



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

Criminal Appeal 78 of 2004

CORNELIOUS GICHOVI NDATI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This appellant was charged with committing un-natural act contrary to section 162 (b) of the Penal Code.

The particulars are stated on the charge sheet. He was convicted and sentenced to 7 years imprisonment. He has filed 3 grounds of appeal:-

1. that the Trial Magistrate did not consider that he is a first offender.
2. that the evidence of single witness not sufficient.
3. that the animal was not produced as an exhibit.

However the record shows that PW1 a veterinary officer at Siakago gave evidence and pointed to the animal which was in court as exhibit. The officer said upon examination he certified everything to be normal with the animal.

PW2 Veronica Ngari Kamami was told by one Gatama that Cornelius Gichobi had had carnal knowledge of her she-goat. It was late she examined the goat's reproductive parts and saw it was swollen. She went to sleep. On the following day in presence of Gatune and sub-area (Michael Ngare) she asked the appellant why he was doing that unnatural act to the goat. He denied it. PW1 threatened to take appellant to police. The appellant expressed his willingness to pay anything to her. The elders decided he pays Shs.8000/=. He was unable to raise that sum. Complainant therefore escorted the appellant with the goat to police station.

The eye witness was PW3 Gatune. He described what he had seen the Appellant do. This evidence was not controverted in any way. Although it was of the only eye witness there is further evidence that afterwards the appellant sought to settle the matter by offering to pay Shs.500/=. The elders had decided that he pay Shs.8000/= to settle the matter he had no such a sum.

I find the prosecution did prove the case beyond reasonable doubt and I find no reason to interfere with conviction.

On the issue of sentence although the maximum sentence is 14 years imprisonment, I find sentence

passed of 7 years is excessive in the circumstances of this case. The accused was a first offender and he said he is sickly and had 2 children.

I therefore set aside the sentence of 7 years imprisonment and substitute the same with imprisonment for 3 ½ years from the date of conviction.

Dated this 19th July, 2007.

J. N. KHAMINWA

JUDGE

19/7/2007

Khaminwa – Judge

Njue – Clerk

Mr. Kimathi

Appellant present

Read in open court.

J. N. KHAMINWA

JUDGE