



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 121 of 2005

PETER KARIMI JOSEPH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Peter Kimani Joseph was charged and taken to court on 15/6/2005. The record (charge sheet) shows that he was 16 years old. The charge was the defilement of a girl under the age of 16 years contrary to Section 145 (1) Penal Code. The incident is said to have occurred on 10/6/2005. However when on 15/6/2005 the appellant was examined and it was reported that the accused was on that date aged over 18 years. PW1 CWN was examined by court to test his capacity to give evidence. She told the court that she was aged 9 years. The court found her not fit to give evidence on oath. Her unsworn statement shows that the Appellant maneuvered the situation so that he was left alone with complainant and the accused took her to his home. He removed her clothes a pair of trousers and a biker. He removed his clothes and put her in a bed and lay down on her. She described he did to her she felt pain and screamed, Mwendwa who was outside came in and knocked the door. Then appellant left the complainant and told her not to report the matter. He also called Mwendwa and told him not to report. However complainant told her mother the following date. She was taken to hospital and Appellant was arrested.

Upon her mother PW2 coming to know of what had happened to PW1 she reported the matter to police. She took the PW1 to Kerugoya District hospital. The appellant was arrested. PW3 gave medical evidence he said he found her private parts injured with bruises. He found no discharge. He confirmed that there was definitely an attempt to defile the girl. He also complained that she was sexually abused.

PW4 was another minor child the Mwendia mentioned by PW1. He confirmed that he saw appellant laying on top of the complainant. On 2/8/2005 when he was asked to defend himself the accused confirmed he was over 18 years old. He gave sworn evidence. At 4 p.m. he was at his home. He denied having committed the offence. On cross-examination he disclosed that he knew the complainant and her family but added that people of Gichugu do not like Meru people. He cancelled witness DW2 who said he knew complainant but did not see her did not see her that day. He also called his school head teacher who said that the appellant was at school on material date and that he was just an ordinary boy. The Judgment was on 11/8/2005 and he was sentenced 6 years imprisonment. By the time offence was committed the law was amended by Act 5/03. The punishment was imprisonment for life.

I have perused the medical evidence. It is clear that the offence disclosed was an attempt to commit the offence. Only bruises were found in private parts. There was no discharge found or spermatozoa. There

is no evidence as to whether hymen was broken or if there was penetration at all. However this is overwhelming evidence that there was an attempt to commit the offence.

I therefore find the appellant guilty of the attempt to have unlawful carnal knowledge of the complainant. I set aside the conviction under Section 145(1). However the maximum sentence is the same under Section 145 (2) under which I convict him. The offence is very serious and the society feels threatened hence enhancement of the punishment. I find six years imprisonment to be fit punishment in the circumstances and I see no reason to interfere. That is the orders of the court. The appellant shall serve 6 years imprisonment for the date of first conviction.

Dated this 4th December, 2007.

J. N. KHAMINWA

JUDGE

4/12/2007

Khaminwa – Judge

Njue Clerk

Mr. Kimathi for State

Appellant - present

Read in open court.

J. N. KHAMINWA

JUDGE