

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 490 of 2003

JOHN NJUGUNA MUIGAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, John Njuguna Mungai was charged with the offence of **defilement of a girl under the age of fourteen years contrary to Section 145 (1) of the Penal Code**. The particulars of the offence were that on the 19th of April 2002 at about 5.00 p.m. at [*particulars withheld*] Molo in Nakuru District, the appellant unlawfully had carnal knowledge of MNW a girl under the age of fourteen years. The appellant pleaded not guilty to the charge and after a full trial the appellant was convicted as charged. He was sentenced to serve 12 years imprisonment with two strokes of the cane. Being aggrieved by his conviction and sentence the appellant appealed to this court.

Although in his petition of appeal the appellant had challenged his conviction by the trial magistrate, at the time of the hearing of the appeal the appellant admitted the offence and only made a plea for the court to consider reducing the imprisonment term that he was ordered to serve by the trial magistrate. He submitted that he committed the offence while he was under the influence of alcohol and drugs. He stated that he was not aware of what he had done and only came to realization of the enormity of his deed, three days thereafter when he was already arrested and in police custody. He submitted that in the three years and eight months that he had been in prison he had learnt a trade and would be a good citizen if he is release back to the society. In his view, if he was sentenced to serve seven years imprisonment that would be sufficient punishment. Mr Koech for the State left the issue of sentence to the court.

I have considered the plea made to this court for reduction of sentence by the appellant. In determining whether or not to reduce the sentence meted out on the appellant this court has to put into consideration the nature of the offence that the appellant was convicted. In this case the appellant was convicted for defiling a girl who at the time was aged five years. The appellant was a neighbour. He took advantage of the fact that the complainant trusted him. He then called her from her home and defiled her in the bush. He thereafter left her and went on with his business of herding cattle as if nothing had happened. While there is a possibility that the appellant could have been drunk at the time of committing the offence, the fact of his drunkenness does not exonerate him from his deed as an adult in the society.

The appellant was expected to act as a guide to the younger members of the society. Instead he took advantage of the complainant thereby traumatizing her; maybe for the rest of her life. This court is not prepared to overlook the crime that the appellant perpetrated. In the circumstances of this case the sentence of twelve years imprisonment was lenient. I would not interfere with it. The appellant shall serve the sentence as ordered by the trial magistrate. His appeal on sentence is thus dismissed. The sentence by the trial magistrate is hereby confirmed. It is so ordered.

DATED at NAKURU this 1st day of February 2006.

L. KIMARU

JUDGE