

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

Criminal Appeal 399 of 2004

ELIJAH OKWAKO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant **ELIJAH OKWAKO** pleaded guilty **to the charge of UNNATURAL OFFENCE contrary to Section 262(a)** of the **Penal Code**. He was convicted and sentenced to serve 10 years imprisonment. He has lodged his appeal against sentence. He urged court to reduce the sentence on grounds that it was harsh and excessive. He submitted that he was 63 years old and therefore very old and ailing due to the strenuously hard conditions of prison. He urged the court to consider he was a first offender a fact the learned trial magistrate ignored and that he was remorseful.

MR. MAKURA opposed the appeal on behalf of the State. Learned counsel submitted that the offence carried a maximum sentence of 21 years and that 10 years imprisonment was lenient. He urged the court to dismiss this appeal.

I have carefully considered this appeal. The learned trial magistrate wanted the Appellant to give his mitigation after entering a conviction upon the guilty plea. The Appellant opted to say nothing. I have considered what he has said before me. The Appellant's plea for reduction of the sentence is based on his age and the inconveniences he is going through while in remand. Those are not good grounds to justify this court to interfere with the sentence imposed by the lower court. Learned state counsel submitted that the sentence of 10 years imprisonment was lenient considering the child's age. In addition to the youthful age of the Complainant, I considered that the offence was well calculated and deliberate. The Appellant took trouble to lure the Complainant to himself before forcefully taking him into the farmland where he sodomised him. The Complainant was rescued by members of public who heard his screams.

Having conspired all these factors, I find that the sentence may have been harsh but it was not excessive as to justify interference by this court. The appeal against sentence is therefore dismissed.

Dated at Nairobi this 22nd day of March 2006.

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LESIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant - present

Mr. Makura for the State

CC: Huka

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LESIT, J.

JUDGE