

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal 401 Of 2003

JULIUS TARUS KIPKARIS.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Julius Tarus Kipkaris was charged with **rape contrary to Section 140 of the Penal Code**. The particulars of the offence were that on the 27th of July 2003 at [particulars withheld] Koibatek District, the appellant unlawfully had carnal knowledge of MS without her consent. He was alternatively charged with **indecent assault of a female contrary to Section 144(1) of the Penal Code**. The particulars of the offence were that on the same day and at the same place the appellant unlawfully and indecently assaulted MS by touching her private parts. The appellant pleaded guilty to the main count. The prosecution withdrew the alternative count. The appellant was sentenced to serve seven years imprisonment. Being aggrieved by his conviction and sentence, the appellant appealed to this court.

Although in his petition of appeal, the appellant raised grounds challenging his conviction and sentence, at the hearing of the appeal he abandoned his appeal of conviction and instead made submissions urging this court to consider reducing the sentence imposed by the trial magistrate. He told the court that he had reformed since he was imprisoned three years ago. While in prison, he had trained in tailoring and was now in a position to take up a trade and assist his parents. In his petition of appeal, the appellant stated that after the rape incident members of the public beat him up and seriously injured him. He stated that the beating which was administered to him had made him become mentally devastated. Mr Gumo, the Assistant Deputy Public Prosecutor left the issue of sentence to the court.

I have considered the facts of this case and the grounds of appeal put forward by the appellant. I have also considered the submissions made by the appellant. The appellant pleads with this court to consider reducing the term of imprisonment imposed upon him by the trial magistrate. The appellant states that he has learnt his lesson and further during the period that he has been in prison, he has learnt a trade and would therefore be a useful member of the society if this court were minded to release him.

I have considered the circumstances under which the appellant raped the complainant. The appellant accosted the complainant while she was walking home. The appellant grabbed her and pulled her into the forest and raped her. The appellant achieved this by threatening to stab the complainant with a knife. In the course of the struggle the complainant was injured on her head, neck and shoulders. Now the appellant wants this court to exercise leniency to him. Having carefully considered the circumstances of this case including the fact that the complainant was injured during the rape ordeal, it is my opinion the sentence of seven years imposed was lenient in the circumstances. The complainant in this case apart from being injured, was traumatized, may be for the rest of her life. I will not therefore interfere with the sentence imposed by the trial magistrate. I find no merit in the appeal filed by the appellant on sentence.

I consequently dismiss the appeal and confirm the conviction and the sentence of the trial magistrate. It is so ordered.

DATED at NAKURU this 1st day of March 2006.

L. KIMARU

JUDGE