

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal 428 Of 2003

RUFUS KIIRU KARANJA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Rufus Kiiru Karanja was charged with **rape contrary to Section 140 of the Penal Code**. The particulars of the offence were that on 6th of July 2002 at [particulars withheld] Show Ground the appellant jointly with another not before court unlawfully had carnal knowledge of L N M(*hereinafter referred to as the complainant*) without her consent. The appellant 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 jointly with another not before court unlawfully and indecently assaulted the complainant by touching her private parts. The appellant pleaded not guilty to the charge and after a full trial was found guilty on the main charge of rape. He was sentenced to serve seven years imprisonment. Being aggrieved by his conviction and sentence, the appellant appealed to this court against the said conviction and sentence.

Although the appellant challenged his conviction by the trial magistrate in his petition of appeal, at the hearing of the appeal, he abandoned his appeal on conviction. He however made submissions with a view of persuading this court to reduce the sentence that was imposed upon him. He submitted that he had reformed. He had learnt a trade while in prison. He had attained wood machinist grade I in the Government grade test examinations. He further submitted that while he was in prison he had been involved in an accident and had lost four teeth. He urged the court to exercise leniency on him and review his sentence. Mr Gumo, the Assistant Deputy Public Prosecutor did not have anything to submit on the issue of sentence. He left it to the court.

I have considered the facts of this case and the submissions made before me by the appellant. The appellant is not appealing against conviction. He is appealing against sentence. He says that since being committed to prison he had reformed and had acquired a skill which would enable him to be a useful member of the society once released. He urges this court to consider reducing the sentence imposed.

I have carefully considered the submissions made by the appellant. I have also not lost sight of the facts of this case. The complainant was raped in turns by the appellant and his accomplice who was however not arrested. The appellant raped the complainant even though he knew that the complainant was the sister of his friend who had blacked out when he took too much alcohol. The appellant and his accomplice took advantage of the fact that the complainant at that time no longer had a guardian to protect her. They raped her in turns in one of the stalls at the [particulars withheld] Show Ground. The appellant wants this court to overlook his indiscretion which was deliberate and undertaken with absolute disregard to the feelings and the decency of the complainant.

Having carefully considered the facts of this case and the mitigation made by the appellant on this appeal, I do hold that the sentence imposed fitted the crime. Despite of the submission made by the appellant that he has reformed and should be given a second chance, the offence that he committed impacted negatively on the well-being of the complainant. This court cannot overlook the fact that the appellant and his accomplice never gave the complainant a second chance. I am not persuaded that this is one case where this court can review the sentence meted out by the trial magistrate with a view of reducing it.

I therefore dismiss the appeal on sentence. The appellant shall serve the sentence imposed by the trial magistrate. It is so ordered.

DATED at NAKURU this 1st day of March 2006.

L. KIMARU

JUDGE