

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 460 of 2003

**(From the original conviction and sentence of the Senior Principal
Magistrate's Court at Naivasha in Criminal case No.1177 of 2003– J. S. Kaburu – S.P.M)**

GEOFFREY WAKA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Geoffrey Waka was charged with the offence of **Defilement of a girl** contrary to **Section 145(1) of the Penal Code**. The particulars of the offence were that on diverse dates between the month of January, 2003 and the 27th of May, 2003 at *[Particulars withheld]* Estate, Naivasha, the appellant had unlawful carnal knowledge of LW, a girl under the age of 14 years. He was alternatively charged with **Indecent Assault on a female** contrary to **Section 144(1) of the Penal Code**. The particulars of the offence were that between the month of January, 2003 and the 27th of May, 2003 at the same place, the appellant unlawfully and indecently assaulted LW, a girl under the age of 14 years. The appellant pleaded not guilty to the charge and after a full trial he was convicted as charged on the main count and sentenced to serve 14 years imprisonment with hard labour. The appellant was aggrieved by his conviction and sentence and has appealed to this court.

Although the appellant challenged his conviction and sentence in his petition of appeal, at the hearing of the appeal he abandoned his appeal against conviction and instead pleaded with this court to reduce the custodial sentence which was imposed upon him. He stated that he was pleading for the leniency of the court since the sentence imposed was too long. He said he had suffered during the period that he has been in prison. Mr. Mugambi for the State opposed the plea of reduction of sentence by the appellant. He submitted that the sentence meted out by the trial magistrate was lenient in the circumstances of this case because the maximum sentence for the offence of defilement was life imprisonment. He urged the court not to interfere with the sentence imposed by the trial magistrate.

I have considered the plea made by the appellant for reduction of sentence. I have also considered the submissions made on behalf of the State by Mr. Mugambi. As stated earlier in this judgment, the appellant abandoned his appeal against conviction. He however pleaded with the court to reduce the term of imprisonment that he was sentenced to serve by the trial magistrate. This court is therefore being called upon to reconsider the sentence that was imposed upon the appellant by the trial magistrate. When a magistrate sentences an accused person, he is exercising judicial discretion. An appellate court will not interfere with the exercise of discretion by a trial court unless it is established by the appellant that the trial magistrate exercised its discretion wrongly or in breach of the law.

In this appeal, having carefully re-evaluated the evidence adduced by the prosecution witnesses, it is clear that the appellant defiled a minor who was aged 12 years at the material time. He did not defile her once but severally. The maximum sentence provided by the law for a person who is convicted for defiling a girl-child is life imprisonment. The appellant was sentenced to serve 14 years imprisonment with hard labour. I agree with Mr. Mugambi that taking into account the offence that the appellant was convicted of, the sentence imposed by the trial magistrate was lenient in the circumstances. I will not interfere with it.

The upshot of the above reasons is that the appellant's appeal against both conviction and sentence is hereby dismissed. The conviction of the trial magistrate and the sentence imposed on the 30th of September, 2003 is hereby confirmed.

It is so ordered.

DATED at NAKURU this 24th day of November, 2006

L. KIMARU

JUDGE