

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL APPEAL NO. 20 OF 2004

(Appeal against both conviction and sentence of the Senior Resident Magistrate's Court at Vihiga in Criminal Case No.109 of 2004. (F. M. KINYANJUI Esq., SRM)

ANTONET OMEDO NYANDO ::::::::::::::::::::::::::::::::::: APPELLANT
V E R S U S
REPUBLIC ::::::::::::::::::::::::::::::::::: RESPONDENT

JUDGEMENT

The appellant, ANTONET OMEDO NYANDO, pleaded guilty to the offence of defilement of a girl under the age of 14 C/S 145(1) of the Penal Code in Vihiga S.R.M. Cr. case No. 109 of 2004 before F. M. Kinyanjui, Esq, Senior Resident Magistrate who, after mitigation sentenced the appellant to 21 years imprisonment with hard labour.

In his Petition of appeal the appellant submitted that he had not unequivocally pleaded to the charge as he did not understand the proceedings. Secondly, he submitted that he pleaded guilty because he was tortured by police officers. The other submissions in the petition were not germane as no evidence had been led against the appellant.

When the appeal came up for hearing on 16-3-2005, the appellant who had no counsel prayed for reduction of the sentence. Mr. Karuri, learned State Counsel, supported the conviction and sentence.

The only issue in this appeal is whether the plea was unequivocal and if so whether the sentence meted out following the conviction was lawful and proper.

I have perused the lower court record. The charge was read in Kiswahili on 22/1/04 to the appellant which he understood. He admitted it. The facts were read to the appellant on 22/1/04 and in response the appellant stated "*The facts are true. I admit the facts of the charge,*" whereupon the trial court entered a plea of guilty and convicted him accordingly.

In mitigation, the appellant stated that he was 19 years of age. He was a first offender. The trial court took these factors into account while sentencing. The court observed that the offence was rampant and a deterrent sentence was called for.

I have examined the circumstances relating to the offence and after taking into account the mitigating factors and prevalence of the offence, I am of the view that a sentence of 15 years will be appropriate. Accordingly, I uphold the conviction against which there is no appeal in view of section 348 of the Criminal Procedure Code Cap 75 but otherwise reduce the sentence from 21 years to 15 years imprisonment with hard labour.

Dated at Kakamega this 17th day of June, 2005.

G. B. M. KARIUKI

JUDGE