

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Appeal 123 of 2003

COLLINS KIPLANGAT KIRUI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant, Collins Kiplangat Kirui, was charged with the offence of defilement contrary to **Section 145(1)** of the **Penal Code**. The particulars of the offence were that on 2nd November, 2003 at [*particulars withheld*], Bomet District, the appellant had unlawful carnal knowledge of JC, a girl under the age of sixteen years. He was also charged with assault causing actual bodily harm contrary to **Section 251** of the **Penal Code**. The particulars of the charge were that on the same day and the same place he assaulted JC causing her actual bodily harm. The appellant pleaded guilty to both charges. He was convicted on his own plea of guilty and sentenced to serve seven years and two years respectively for the two offences for which he was convicted. The said sentences were ordered to run concurrently. The appellant was aggrieved by his conviction and sentence duly filed an appeal to this court.

In his petition of appeal, the appellant raised several grounds of appeal; The said grounds of appeal can however be broadly summarized into two grounds of appeal. The first ground is that the appellant was aggrieved that he had been convicted on a plea of guilty that was not unequivocal. The second ground of appeal is that the appellant complains that the custodial sentence meted out on him was too harsh and excessive in the circumstance. The appellant urged the court to quash his conviction and or consider sentencing him to an appropriate lenient sentence. At the hearing of the appeal, the appellant, who was unrepresented, stated that he was admitting the offence. He admitted assaulting and defiling the complainant at the time due to drunkenness. He submitted that he committed the offence a day before he was due to sit for his Kenya Certificate of Primary Education examinations. He asked the court to exercise leniency in sentencing him. He submitted that he had served two of the seven years term of imprisonment imposed. He stated that he had trained in artisanship while in prison and would be a useful member of the society if released.

Mr. Koech, Learned State Counsel submitted that the plea of guilty recorded by the trial magistrate was unequivocal. He urged the court to dismiss the appeal on conviction and not to disturb the sentence meted out on the appellant.

I have considered the grounds of appeal put forward by the appellant and his submissions made before this court. This being a first appeal, this court is mandate to re-evaluate the proceedings of the trial magistrate's court and reach its own independent conclusion whether or not the appellant was properly convicted. In the instant appeal, the appellant pleaded guilty to the two charges that he faced at the lower court. I have carefully perused the proceedings of the trial magistrate's court and note that the said plea of guilty was recorded in accordance with the law. The plea of guilty recorded was unequivocal. The appellant understood the charges that he faced. He pleaded guilty to the two charges after it was explained to him and the facts of the case narrated to him. He cannot complain that the said plea of guilty was irregularly recorded. Indeed at the hearing of this appeal, the appellant abandoned his appeal against conviction.

On sentence, I considered the mitigation offered by the appellant and his submissions before me on

appeal. The appellant's submission is basically a plea for mercy. Considering the fact that the complainant was defiled and assaulted by the appellant at the age of eleven years, the sentence meted out on the appellant by the trial magistrate's court was lenient in the circumstances. A harsher sentence was called for. However in the circumstances of this case, since the State is not asking that the sentence be enhanced, the appellant will serve the sentence meted on him by the trial magistrate. His appeal lacks merit. The same is dismissed. The conviction by the trial magistrate of the appellant and the sentence of seven years imprisonment imposed is hereby confirmed.

DATED at KERICHO this 30th day of September 2005.

L. KIMARU

JUDGE