



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL 25 OF 2004**

JOHN MUIGAI NJEHIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the original conviction and sentence that was passed against him Nyahururu Principal Magistrate's Court Criminal CaseNo.354 of 2004. In that case, the Appellant had been charged for the offence of Rape, contrary to Section 140 of the Penal Code. The Alternative charge against the Appellant is Indecent Assault on Female, contrary to Section 144(1) of the Penal Code. The facts of the prosecution case as stated in the charge sheet for the Count 1 are as follows:-

“On the 6th January, 2004 at [Particulars withheld] Village in Nyandarua District within Central Province, unlawfully had carnal knowledge of H W W without her consent.”

The facts of the prosecution case as stated in the charge sheet for Count II are as follows:-

“On the 6th January, 2004 at [Particular withheld] Village in Nyandarua District within Central Province unlawfully and Indecently Assaulted H W W by touching her private parts.”

During the hearing of the appeal, the Appellant narrated how he had been arrested and taken to Nyahururu Court where he was shocked and pleaded “Guilty to the offence. The Appellant was categorical that he never raped the complainant despite having been jailed for 45 years. The Appellant later handed over written submissions to the Court. The said submissions are actually the mitigation of the Appellant. Apart from the above, has admitted having committed the offence.

On the other hand, Mr. Gumo, Asst. DPP submitted that the Appellant was convicted on his own plea of “Guilty” that was unequivocal. That apart, Mr. Gumo has also submitted that the conviction was safe. However, he conceded that the sentence of 45 years was excessive.

This Court has carefully perused the above together with the record of appeal. At the outset, it is apparent that the appellant pleaded “Guilty” when he was arraigned in Court on 22nd January, 2004. Apart from the above, the appellant himself conceded that he had been raping the complainant because he never had a wife. Unfortunately, in this case, the complainant was deaf and dumb who could not protect nor defend herself.

Given the conduct of the Appellant, I am not surprised that the learned Magistrate imposed a sentence of 45 years imprisonment.

The State has rightly conceded that the said sentence was excessive.

This Court hereby upholds the conviction since the evidence on record is water-tight. However, I hereby reduce the sentence to 15 years imprisonment with hard labour.

It is only to that extent that the appeal succeeds.

Right of Appeal explained.

MUGA APONDI

JUDGE

28TH September, 2005

Judgment read signed and delivered in open Court in the presence of the Appellant and Mr. Njogu for State.

MUGA APONDI

JUDGE

28TH SEPTEMBER, 2005