



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL 430 OF 2003**

**STANLEY CHERUIYOT KORIR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant has appealed against the original conviction and sentence in Molo Senior Resident Magistrate's Criminal CaseNo.878 of 2003. In that case, the Appellant had been charged for the offence of Rape, contrary to Section 140 of the Penal Code. The second charge against the Appellant was that of Assault causing Actual Bodily Harm, contrary to Section 251 of the Penal Code. The

Facts of the prosecution case as stated in the charge sheet for Count I are as follows:-

**“On the16th April, 2003, at Sigowet in Olenguruone of Nakuru District within Rift Valley Province unlawfully had carnal knowledge of [particulars withheld] without her consent.”**

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

**“On the 16<sup>th</sup> April, 2003 at Sigowet in Nakuru District of the Rift Valley Province assaulted [particulars withheld] thereby occasioning her actual bodily harm.”**

During the hearing of the appeal, the Appellant stated that the Complainant was his wife and that they had been married for 6 months. Besides the above, the Appellant complained that he was not examined by a Doctor and that all the witnesses had not been called to give their testimony.

Apart from the above, the Appellant also complained that the sentence imposed was excessive. In addition to the above, the Appellant also presented to the Court written submissions. The first ground in the written submissions is that the learned Magistrate erred in a matter of law and fact in convicting him relying solely on the evidence of the PW1. The other two grounds had actually been argued earlier.

On the other hand, the State through Mr. Gumo, Asst. DPP supported both the conviction and sentence. According to Mr. Gumo, the offence was perpetrated outside at around 2.00 p.m. and that there was no evidence that the complainant was the wife to the Appellant. That apart, Mr. Gumo also submitted that when the complainant was examined, it was observed that her labia majora had been injured during the sexual assault. There was also seminal fluid that was found in the complainant's vagina. In addition to the above, Mr. Gumo also submitted that the complainant was not mistaken in the

Appellant's identification as they were together for a considerable period of time. In conclusion, Mr. Gumo submitted that the 15 year jail term imposed on the Appellant was well deserved sine our society is trying to get rid of Rapists and other undesirable elements.

This Court has carefully perused the above together with the record of appeal which contains the Judgment of the learned Magistrate. Since this is the first Appellate Court, I have the obligation and duty to examine and evaluate the evidence afresh and reach my own conclusion.

From the evidence on record, it is apparent that the complainant was assaulted and raped by the Appellant on the material day. She explained in details how she faced the above ordeal on the material day. Her evidence was confirmed and corroborated by the PW2 --Robinson Kipsingat who is a Clinical Officer at Olenguruone Hospital. The PW2 confirmed that the complainant had whip marks on her chest and abdomen. ThePW2also found seminal fluid from her vagina and that her labia majora had been injured. The PW2 also took a swab that revealed spermatozoa. The PW2 concluded that the complainant had been raped. Though the Appellant claimed that the complainant was his wife, he never brought up that issue during cross-examination. He only brought up the same in his defence.

Having perused the above evidence, I am of the considered opinion that the learned Magistrate viz, Mr. R. Kirui, S.R.M., had evaluated the evidence properly and came to the right decision. Since the conviction is safe and well merited, I hereby uphold the same.

As far as the sentence is concerned, the maximum provided bylaw is life imprisonment with hard labour. Given the circumstances of the case, the sentence of 15 years with hard labour is hereby reduced to 10 years with hard labour

It is only to that extent that the appeal succeeds.

MUGA APONDI

JUDGE

28<sup>th</sup> September, 2005

Judgement read signed and delivered in open Court in the presence of the Appellant and Mr. Njogu.

MUGA APONDI

JUDGE

28<sup>th</sup> September, 2005.