



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 242 OF 2001.

**MUTI
MWAHUI.....
.....
APPELLANT**

-VERSUS

**REPUBLIC.....
.....
.....RESPONDENT**

**(From Original Conviction and sentence in Criminal Case No. 1851 of 2001 of the
Chief Magistrate's Court at Mombasa – A. Ngugi – RM**

J U D G E M E N T

This is an appeal against sentence only.

The appellant was tried, convicted and sentenced on a charge of attempted rape contrary to section 141 of the Penal Code. He pleaded guilty and was subsequently sentenced to serve a prison term of 10 years plus 6 strokes of the cane.

The facts were that on the night of 31.5.01 at about 3.00 a.m. the complainant while sleeping in an open yard at their homestead, was approached by the appellant who grabbed her by the neck and threatened to cut her with a panga, and proceeded to remove her pants. It was then that the complainant raised an alarm and members of the public came to her rescue. He was arrested and escorted to the Police Station where he was charged.

In his mitigation the appellant told the trial court that he, be treated with leniency and that he would never repeat the offence. He was a first offender.

The Court however, having considered the mitigation said the offence was serious and was one that called for a deterrent sentence and hence the sentence of 10 years plus 6 strokes.

On his appeal before me, the appellant regretted the incident and showed that he was remorseful. The State Counsel agreed that a long spell in prison, may not be the right sentence.

The appellant is a young man and married with 2 children but the offence is serious and to make matters worse for him, he was armed with a panga and did threaten the complainant to cut her. He did get

what he deserved. I do hope, he has realized that the Law protects women from such beastly attacks and the courts will hesitate to punish those who out of lust and violence, are tempted to attack the weak and the innocent. Due to his age and his resolve to be a better citizen and having considered the fact that along prison term might mess up his life and that of his young family, I have considered to reduce his prison term of imprisonment and alter his sentence as follows:

- 1. His pri son sentence is hereby reduced to 3 years.**
- 2. Corporal punishment reduced to 2 strokes.**
- 3. On his release he will be placed under Community Service Programme for a period of 4 years.**

To this extent, the appeal is allowed.

Orders accordingly.

DATED THIS.....DAY OF.....2002.

L.P. OUNA

JUDGE