



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA**

Criminal Appeal 34 of 2003

JOEL MANGOMA

NATIRIAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The Appellant, Joel Mangoma Natiri, appealed against his conviction and sentence by F.N. Kinyanjui SRM in CRC No. 133/2003 at Vihiga. He was charged before the Resident Magistrate at Vihiga, F.M. Kinyanjui Esq. with the offence of attempted rape contrary to section 141 of the Penal Code. The particulars of the offence were that on 2nd February 2003, at {*particulars withheld*} in Vihiga District, the Appellant attempted to have carnal knowledge of one C A without her consent. When the charge was read out and explained to the Appellant, he said it was true. When the facts were read out to him, he admitted them whereupon the trial magistrate entered a plea of guilty and proceeded to convict the Appellant. The Appellant was treated as a first offender. In mitigation, he asked for leniency. The trial magistrate took into account before passing sentence the fact that the Appellant was a first offender and who had pleaded guilty and had sought leniency. He imposed a sentence of 6 years in prison with hard labour and 6 strokes of the cane.

The plea of guilty was unequivocal. The Appellant was not entitled in the light of that plea to appeal against conviction. Under section 348 of the CPC, the Appellant was entitled only to appeal against legality or severity of sentence. Mr. Kithaka learned Senior State Counsel, who appeared for the Respondent in this appeal expressed the view that while the plea was clear and unequivocal, the sentence was proper. In her submissions, Mrs. Kithaka stated that the Appellant was not entitled to challenge conviction under section 348 of the CPC. On his part the Appellant merely sought a lenient sentence. He pleaded that he had had an operation on his private parts.

I have given due consideration to the petition of appeal and the submissions by the Appellant. I have also given due consideration to the submissions by the Senior State counsel, Mrs. Kithaka. I am satisfied from my perusal of the record of the trial court that the Appellant's plea was clear and unequivocal. The Appellant not only admitted the offence but also the facts and particulars that constituted and gave rise to the offence of attempted rape. Under section 348 of the CPC, he is not entitled to challenge the conviction. His appeal on conviction has no merit. As regards sentence, the six years imprisonment plus corporal punishment and hard labour thought not illegal was excessive in the circumstances of this case.

Pursuant to section 354 (3)(b) of the CPC, I reduce the sentence to five years with hard labour only. The corporal punishment is set aside. For the avoidance of doubt the Appellant shall serve sentence of five years in prison with hard labour only. It is so ordered.

Dated at Kakamega this 24th day of June 2004

G.B.M. KARIUKI

J U D G E

23.6.2004

Before G.B.M. Kariuki J

Mudoto court clerk

Court: Let the Appellant Joel Mangoma Natiri be produced in court on 24.6.2004 when his judgment shall be delivered.

G.B.M. KARIUKI, J

24.6.2004

Before G.B.M. Kariuki, J

Mudoto court clerk

Appellant present

Mrs. Kithaka for the State

Sentence read out to the Appellant on 24.6.2004.

Dated at Kakamega this 24th day of June 2004

G.B.M. KARIUKI

J U D G E

24.6.2004