

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL 145 OF 2003**

HELLEN WANJALA

VICTOR WANJALA

..... **APPELLANTS**

VS

REPUBLIC

..... **RESPONDENT**

J U D G M E N T

The appellants herein were tried for the offence of abduction of a girl under the age of 16 years contrary to section 143 of the Penal Code. It is stated that on 25.11.2002 at Nangili village Webuye location in Bungoma District of Western province the appellants jointly abducted Caroline Simasi a girl under the age of 16 years from the custody of her mother Beatrice Simasi. They were convicted and each sentenced to serve 1 year imprisonment, hence this appeal.

The appellants listed 7 grounds of appeal to challenge the Senior Resident Magistrate's Judgment. Mr. Sichangi who appeared for the appellants attacked the evidence relied by the trial court as insufficient to sustain a conviction. It was submitted that no evidence was led to prove that the complainant was under the age of 16 years.

The appellants' advocate also stated that the sentence slapped on them was harsh and excessive.

The learned senior state counsel opposed the appeal and submitted that the prosecution proved its case to the standard of beyond reasonable doubt in view of the evidence on record.

The brief history of the case is that Caroline Simasi, a class 6 pupil at Khamoto Primary had visited the home of Hellen Joseph Nanjala, the 2nd appellant on 25.11.2002 to collect her clothes which had been taken by her. She is apparently her sister in law who was married to her cousin. Upon reaching the 2nd appellant's home, she was told that her clothes had been taken by one Victor, the 1st appellant, a person she had heard about but had not seen him. The 2nd appellant then persuaded her to accompany her to the house of Victor, the 1st appellant so as she could collect her clothes. They both boarded a Nissan Matatu to Busia where Victor lived. That night she slept with Victor whereupon the 2nd appellant left for Bungoma having tricked her. She remained there cohabiting with the 1st appellant as man and wife until 19.12.2002 when Hellen Nanjala came to fetch her when she heard that the police were in the process of arresting her for the disappearance of Caroline Simasi. She told Caroline not to reveal the whole story but instead cheat that she had gone to work as a maid. Of course when she went back home she revealed the whole episode and this led to the arrest of the appellants. The evidence of Hellen's mother, Beatrice Simasi who testified as P.W. 3 shows her daughter had visited the home of the 2nd appellant. She is the one who actually made the village elder, the chief and the police to take action leading to the apprehension of the appellants.

When placed on their defence each appellant gave separate unsworn statement of defence. The 1st appellant denied knowledge of the complainant's daughter. He however admitted having been notified of the complaint by the complainant. He claims that he was arrested when he went to the police upon being summoned by the police. The second appellant admitted the fact that the complainant's daughter used to visit her. She denied knowledge of her disappearance. She however alluded that she had a grudge with the complainant's mother. She did not state the nature of the quarrel.

The thrust of the appellant's ground of appeal is that the complainant's daughter was not below the age of 16 years. The evidence of the complainant who testified as P.W. 3 indicates that her daughter Caroline

P.W.1 was born in 1988 hence she was about 14 years old. Her evidence on this aspect was not challenged on cross-examination. No contrary evidence was given to state otherwise. I have no reason to doubt P.W. 1's age as stated by her mother.

The girl's evidence shows she actually cohabited with the 1st appellant in Sikinga. She testified in chief and confirmed upon cross-examination that she was taken against her will and consent of her mother by Hellen, the 2nd appellant in cahoots with the 1st appellant. She was firm and consistent that she was taken to the house of the 1st appellant at Busia by the 2nd appellant.

From the evidence on record it is clear that the offence was established by the prosecution to the standard of beyond reasonable doubt. I am satisfied that the trial court arrived at the right conclusion and verdict. The evidence presented by the prosecution witnesses established the offence beyond peradventure hence the appellant's appeal has no merit at all. The sentence as it is is not harsh nor excessive as alleged.

The appeal therefore lacks merit. The same is dismissed in its entirety.

DATED AND DELIVERED THIS 30th DAY OF July 2004

J.K. SERGON

JUDGE