

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS
APPELLATE SIDE
CRIMINAL APPEAL NO. 140 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 113 of 2003 of the Senior Resident Magistrate's Court at Kangundo: N. N. Njagi Esq.18.3.2003)

PATRICK MUTHIANI KATWIKUAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G E M E N T

The appellant was charged in Kangundo Senior Resident Magistrate Criminal Case 113/2003 with two offences. The first charge was one of Malicious damage to property contrary to Section 339(1) of the Penal Code and the second charge was one of creating disturbance in a manner likely to cause a breach of the peace contrary to section 95(1)(b) of the Penal Code. After the trial the appellant was convicted on both counts. He was sentenced to 4 1/2 years and 6 months respectively. The appellant filed this appeal and from the grounds of appeal it seems he is only appealing against the sentence which he claims was excessive.

Briefly the facts of the case before the lower court were that the appellant who is the son of the complainant went to the complainant's house, started abusing her, got hold of her from the back, tore her dress and made her fall. Complainant said he wanted to rape her but did not say exactly what he did to make her believe he wanted to rape her. She raised an alarm and the public came to her rescue. The appellant was later arrested. P.W.2 the Assistant Chief was called to the scene, arrested appellant and handed him over to the police and he was charged for the two offences. When put on his defence the appellant opted to remain silent. The complainants testimony therefore remained unchallenged. The skirt that was allegedly torn was produced in court as an exhibit. Though from the grounds of appeal the appellant seemed to be dissatisfied with only the sentence the submissions were that the appellant lied to court and that they had problems at home meaning that he was dissatisfied with the conviction.

I have considered the evidence on record and in my view there is enough evidence in support of the charges that the appellant faced. The evidence of the prosecution was unshaken. The appellant damaged the complainant's skirt, made her fall and hurled abuses at her until the complainant's screams attracted members of Public. Both offences as charged were proved beyond any doubt and the court will not interfere with the conviction as it is sound.

The appellant was said to be a first offender and he claimed to be remorseful. The sentence of 4 1/2 years on the first charge of malicious damage contrary to section 339 (1) Penal Code was excessive in the circumstances surrounding the commission of the offence and all factors considered a sentence of 18 months imprisonment would have sufficed. As regards the 2nd charge the appellant was given the maximum sentence of 6 months. That was also excessive in the circumstances. A sentence of 4 months would have been fair. The court therefore sets aside the sentences imposed and sentences the appellant to 18 months imprisonment on count I and 4 months imprisonment on count II respectively. Appeal on sentence succeeds in part. Orders accordingly.

Dated, read and delivered at Machakos this 12th day of October 2004.

R. V. WENDOH

JUDGE