

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 168 OF 2002

PETER MBUVI MUNYAACCUSED

VERSUS

REPUBLICPROSECUTOR

JUDGEMENT

The appellant herein was charged in the lower court with the offence of unnatural offence contrary to section 162(a) of the penal code in that on 24.4.2002 at K village I sub-location Kangundo Location in Machakos District within the Eastern Province had carnal knowledge of KKM against the order of nature.

The record shows that the charge was read to the appellant in a language indicated as Kikamba and he appellant alleged that he admits the charge.

A plea of guilty was entered. The facts were narrated and the appellant court stated again that he admits the charge. He was convicted and sentenced to serve 14 years imprisonment. He has appealed to this court citing 6 grounds of appeal namely that he pleaded guilty to the charge, that he is sincerely remorseful and utterly repentant thus promising to forge an utter now cause of rehabilitation if pardoned, that he was misled by elderly and wayward boys into commission of the said offence whom he now wholly rebuke and hence swears not to associate with if so pardoned, he is a teenager of 19 years and the only son of a long widowed mother who is also unproductive and so he pleads for leniency. He promises in future not to indulge or associate with nor conspire in any form of law breaking act if so pardoned. The sentence imposed upon him is manifestly harsh and rather inhuman considering the age factor and he is therefore at the mercy of the honourable court.

The appellant appeared in court and all that he said was that he seeks reduction of the sentence. The state on the other hand submits that the offence is serious and it was committed against a young boy of 4 years.

That the offence was intentional and so the court was right in giving the appellant maximum sentence of 14 years although he was a first offender.

This should be a warning to other would be offenders. She urges the court to uphold the sentence.

On the courts assessment of the facts herein it is clear that the appellant is challenging only the sentence. He says it is harsh and excessive. He has put in mitigating factors in his grounds of appeal. The summary of then is that he is a young man of 19 years and only son and that he was misled by way ward boys but he is now remorseful, he promises to be a good citizen if released.

I agree with the state that the offence was serious and aggravated by the fact that it was committed against a helpless 4 years old boy. A stiff sentence is called for. However when all the relevant factors are considered the sentence meted out is on the high side and it merits interference more so when it is not disclosed that the child suffered any addition physical injuries or that he was put in any danger as to his future health although I have no doubt that the child will be psychologically traumatized. Against that the court also has to consider the fact that the appellant is a young boy of 19 years who could have easily been led into bad habit by his peers as he has put it himself. I also have to consider the fact that long incarceration will ruin his future life. For this reasons only the sentence is reduced to one of 5 years

imprisonment with 4 strokes of the cane.

Dated, read and delivered at Machakos this 31ST day of March, 2003.

R. NAMBUYE

JUDGE