REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.50 OF 2001

(From original conviction and sentence in Criminal Case No.848/2000 of the Senior Resident Magistrate at MOLO - J. KIARIE (S.R.M.)

JOHN KIPLANGAT……….......………………………..APPELLANT

VERSUS

REPUBLIC…………………………………………..RESPONDENT

J U D G M E N T

The Appellant has appealed against the conviction and sentence of the Molo SRM's Court Cr. Case No.848/2000. He has urged the court to find that the Complainant and her companion PW4 had trespassed into his bossess property and that the Appellant and six other watchmen apprehended them. That in order to escape from alleged offence, they started screaming and finally alleged that he had raped the Complainant.

The State supports the conviction and in the Learned Counsel's submission has urged the court to find that there was overwhelming evidence against the Appellant.

I did carefully scan through the lower court's record. I agree with the Learned State Counsel that the evidence adduced against the Appellant was overwhelming. The Complainant's evidence was corroborated by PW4 in all material particulars. She was in the company of the Complainant when the incident occurred. The evidence of PW2 and DW1 both who had together with the Appellant and others apprehended the Complainant and PW4 for trespass confirms evidence of PW4 and the Complainant that indeed the Complainant and PW4 were left with the Appellant and another on the Appellant's command. The evidence of PW2 and DW1 confirms that the Appellant not only was last seen with the Complainant, PW4 and another but also that there was opportunity for this offence to be committed. It also shows that the Appellant had formed an intention to be left with the Complainant for a purpose. His actions confirm that the purpose he intended was to rape the Complainant.

I am satisfied from the evidence before the court that the court directed itself properly on the evidence adduced before it, treated the evidence as required and arrived at a proper finding. I see no reasons to disturb the court's finding of guilt.

On the sentence the Learned State Counsel submitted that it was called for due to the circumstances of the case. The trial court indicated it considered Accused's mitigation and fact he was a first offender before sentencing him as he did.

Whereas I agree that the offence is serious, that the circumstances were also serious, the order of 10 strokes appear to be excessive. The society is looking down on sexual offenders especially with the serious scourge of AIDS which can easily spread if such offences encouraged.

It is the duty of a court not only to protect the public at large from such offenders as the Appellant but in sentencing to show displeasure by taking a firm stand. The offence was serious, unwarranted and aggravated by the fact that as a consequence of it the Complainant was infected with a sexually transmitted disease. The sentence of 10 years imprisonment was appropriate. 10 strokes of the cane are however excessive and I will reduce those to 5 strokes. The appeal against sentence succeeds to extent hereof.

Dated and delivered and Nakuru this 11th day of March, 2003.

JESSIE LESIIT

JUDGE