

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 365 OF 2001
(APPEAL FROM JUDGMENT OF S. A. OKATO, RESIDENT
MAGISTRATE KERUGOYA IN CR. CASE NO. 2623 OF 2001)

STANLY KARIMI MURIUKI APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

Stanley Karimi Muriuki hereinafter referred to as the Appellant was convicted by the Resident Magistrate Kerugoya of two counts of Defilement of a girl contrary to section 145 (1) of the Penal Code and one count of indecent assault contrary to section 144 (1) on his own plea of guilty. He was sentenced to serve concurrent terms of 7 years imprisonment and 5 strokes of the cane on each of the Defilement charges and 4 years imprisonment and 4 strokes of the cane on the charge of indecent assault. The Appellant has now appealed against his conviction and sentence contending that he did not plead guilty and that he was not given an opportunity to adequately defend himself.

Learned state counsel Mr. Obuo has supported the conviction and sentence in respect of count 2 and 3 contending that the same was equivocal while conceding that the plea in respect of count 1 was not properly taken.

From the proceedings it is apparent that the plea in respect of the two Defilement charges i.e. count 1 and 2 was not properly taken as the charges were not read and explained to the Appellant before he entered a plea of guilty. In addition no facts were given in respect of count 1 before the Appellant was convicted. The conviction of the Appellant based on a defective plea was improper and cannot stand.

With regard to count III on the indecent assault charge, the charge was properly explained to the Appellant and he admitted the same to be true. The facts were also properly put to him and again he admitted that the facts were true. The plea was therefore unequivocal and his conviction on this charge proper. As regards the sentence of 4 years imprisonment, hard labour and 4 strokes. The same was not manifestly excessive given the circumstances of the offence. Indeed the maximum sentence for this offence which was 5 years has now been revised to 21 years. In the spirit of the recent abolition of corporal punishment vide Act I would vary the sentence to the extent of removing the requirement for Appellant to be subjected to hard labour and suffer 4 strokes of the cane.

The upshot of the above is that I do allow the appeal to the extent of quashing the conviction and sentence in respect of count 1 & 2, and varying the sentence in respect of count 3 to 4 years imprisonment only.

To this extent only does the appeal succeed.

Dated signed and delivered in open court this 5th day of December 2003.

H. M. OKWENGU

JUDGE