

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 124 OF 2000

(From Original Conviction and Sentence in Criminal Case
No. 75 of 1998 of the Resident Magistrate's Court at
Makueni, J. K. Kiia Esq. on 14.3.2000

PIUS MUTUKU MUTISYA ::::::::::::::: APPELLANT

VERSUS

REPUBLIC ::::::::::::::: RESPONDENT

J U D G E M E N T

The appellant herein was charged with the offence of Rape C/s 140 of the Penal Code in the Resident Magistrates court at Makueni vide Criminal Case no. 75/98. The record shows that on 14.3.2000 the appellant was reminded of a charge in a language not indicated and he admitted the same. The facts were narrated and he accepted the same. He was convicted and then sentenced to seven years imprisonment, hard labour with 4 strokes of the cane.

The appellant has appealed to this court citing 4 grounds of appeal namely that he pleaded guilty to the charge not because of his freewill but to avoid further police torture, that he has lodged the appeal against sentence only and he wishes the same to be released on his mentioned grounds and that the period he was under confinement since arrest should also be considered.

In his mitigation the appellant had indicated that he was 24 years old and unmarried.

In his oral submissions the appellant just stated that he was appealing for reduction of the sentence and that the same to be made to run concurrently with the sentence being subject of the appeal No. 97/00.

The State left the matter to the court. I have considered the circumstances of the offence. Indeed the complainant was raped but she did not suffer any injuries save for the trauma of the ordeal. The appellant is now remorseful. He wants the court to order that the sentence herein to run concurrently with the sentence in H.C.CR.A 97/00.

I called for Criminal Appeal No. 97/00. I have perused the same and find that it arises from the same facts and offence as the one in the present appeal. The appeal therein was filed on 18.7.00 and it was summarily rejected by my brother Judge on 30.10.2000. There was no appeal against that summary dismissal. While the present appeal was filed on 4.9.00. It was based on the same grounds. It is therefore a duplication of appeal No.97/00. Since appeal No. 97/00 was earlier in time and it has been finalized no other order can be made in this duplicate file varying the orders made in appeal file No. 97/00 by my brother judge.

The best cause to take by the appellant is to appeal to the court of appeal against the summary dismissal of his appeal in appeal No.97/00. If allowed by the Court of Appeal is when the file will be remitted back to the High Court for hearing of appeal No. 97/00 on merit.

For the reasons given this appeal being a duplication of appeal No. 97/00 is struck out.

Dated, read and delivered at Machakos this 16th day of July, 2002.

R. NAMBUYE

JUDGE