

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 96 OF 2000

**(From Original Conviction and Sentence in Criminal Case No. 952 of
1999 of the Resident Magistrate's Court at Makindu: O. J. Ochako Esq. on
8.10.99)**

MWEMA MOKI ::: APPELLANT

VERSUS

REPUBLIC ::: RESPONDENT

Coram: J. W. Mwera J.
Appellant Absent
Orinda State Counsel for Respondent
C.C. Muli

J U D G E M E N T

The appellant faced a charge under S. 140 Penal Code in that on 4.10.99 at [particulars withheld], Makueni with another not before court he had carnal knowledge of G.N without her consent. In a plea of guilty facts which this court is of the view constituted an offence as charged set out how the appellant and his colleague lured the complainant into a bush pretending that they would show her a short cut home when her transport developed a mechanical problem. It was said that they held the complainant by force and had carnal knowledge of her without her consent. A clinical officer had prepared a P.3 form which was laid before the Learned Trial Magistrate to the effect that the complainant was raped. After due process the lower court imposed a 7 year prison term plus 8 strokes and hard labour. In his appeal the appellant prayed that the sentence was harsh and it ought to be reduced. He expressed a wish to be present at the hearing of the trial. He was advised to do so at his own expense. Apparently he was not able to arrange for that and the appeal was heard in his absence. The Learned State Counsel supported the conviction and this court noted that the plea of guilty was properly taken.

As for the sentence, the Learned Trial Magistrate took time after the mitigation that the appellant was a first offender. He himself told the lower court his colleague persuaded him to engage in the offence. The Learned Trial Magistrate remarked that the offence was serious and that rapes of young girls were prevalent in the country. That the complainant would suffer life – long trauma. With all this in mind the sentence of 7 years, 8 strokes plus hard labour was deserved. The maximum prison term under S.140 Penal Code is for life. The appeal is dismissed. Judgement accordingly.

Delivered on 13th March 2001.

J. W. MWERA

JUDGE