

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 127 OF 2000

(From the Original Conviction and Sentence in Criminal Case No. 2258 of 2000 of the Senior Principal Magistrate's Court at Machakos: J. S. Kaburu Esq. on 24.8.2000)

RAPHAEL MUTIO MAINGI :::::::::::::::::::::::::::::: APPELLANT
VERSUS
REPUBLIC :::::::::::::::::::::::::::::: DEFENDANT

Coram: J. W. Mwera J.
Appellant not wishing to be present
Orinda State Counsel for Respondent
C.C. Muli

J U D G E M E N T

The appellant pleaded guilty to a charge under S. 145 (1) Penal Code in that on 5.8.2000 at Kyanguluni village, Yathui, Machakos he had carnal knowledge of Jackline Syombua Mbithe a girl under the age of 14 years. There was an alternative charge under S. 144(1) Penal Code of indecent assault but proceed did not go on that one. The appellant got 12 years imprisonment plus five (5) strokes of the cane.

On appeal it was stated that the appellant was 16 years of age and that he had engaged in a sex game with the complainant – a 14 years old. That there was enmity between their families and he was sorry for what he did.

The conviction following the seemingly properly taken plea of guilty was supported by the Learned State Counsel. As for the sentence, it was submitted that with the appellant's age of 18 years (that is by the medical assessment placed before the Learned Trial Magistrate) another mode of punishment should have been adopted.

The conviction followed a proper plea. The sentence though lawful, and without discounting the general outcry about increasing sexual assaults on minors, could be considered on the higher side for an 18 year old. In the circumstances, that sentence is set aside. The probation officer to produce a report about the appellant for this court to consider in the next 30 days. In the meantime the appellant remains in prison.

Mention in 30 days for a probation report.

Judgement accordingly.

Delivered on 12th June 2001.

J. W. MWERA

JUDGE