



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 822 OF 1999

**(From Original Conviction and Sentence in the Criminal Case No. 1793 of
1999 of the Resident Magistrate's Court at Kikuyu:D.S. Ole Tukai)**

HOSEA KIUNA WANJIRU.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant Hosea Kiuna Wanjiru was convicted of plea of guilty to the offence of alleged rape contrary to section 141 of the Penal Code by the trial 1st Class District Republic, Kikuyu upon his conviction, he was sentenced to serve seven years imprisonment with hard labour. His appeal to this court is against conviction and sentence.

I have perused the record of the court below and I am satisfied that the Appellant who is now aged 17 years, was convicted on his own unequivocal plea of guilty to the charge. Accordingly no appeal against conviction conviction has come to this court by virtue of section 348 of the Criminal Procedure Code except on sentence. I dismiss his appeal against conviction.

As for the sentence that was imposed, I am satisfied that the Appellant being a Juvenile did not deserve committal to main prison. He ought to have been treated as a young offender. The learned trial Magistrate was there fore in error regarding his sentencing approach. I therefore set aside the sentence that was imposed upon him.

Having now called for social background report from the Probation Officer and perused his report, and having seen the Appellant who appears sickly and has been admitted at K.N.H for the last three months, I consider that this is a suitable case where the Appellant is likely to benefit from Supervision on probation.

I am glad that both the mother and uncle of the appellant, I believe that with their concerned effort under the guidance of the Probation Officer the Appellant come become a good boy and useful member of the Kenyan Society.

I therefore order that the Appellant be placed on probation for a period of two (2) years from the date hereof. He will be supervised by the Probation Officer Nairobi. He will abide by the terms of public order which I have personally explained to him. It is so ordered.

Dated and delivered at Nairobi this 11th day of April, 2000.

S. O OGUK

JUDGE

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ORDER

This court on the 11th of April, 2000 released the

Respondent(Appellant) on probation for a period of 2 years. He reported regularly to the Probation Officer, Limuru till December, 2000 when they were evicted from the forest where they used to stay. He then shifted to Maela without informing the Probation Officer. He was later re-arrested by the Police and brought to this court.

I understand the predicament of the accused person since his family is landless, but he is under duty at all times to notify the Probation Officer of his difficulties and personal calamities. I sympathize with him but I cannot entertain any default in the terms of the Probation Order. I caution him to be of good behaviour.

I re-instate his sentence on probation of this court and release him to go and report to the Probation Officer, Limuru. This period of probation will now be extended by a further 6 months since he has been in default since December, 2000.

It is so ordered.

Dated and delivered at Nairobi this 14th day of May 2000.

S.O.OGUK

JUDGE

Court:

A copy of this amended order to be supplied to the Probation Officer.