

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL APPEAL NO. 17 OF 2020

MAALIM RAMADHAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal from the judgment of Hon. Khapoya S. Benson Principal Magistrate, delivered on 20th September 2019 in Taveta Principal Magistrate's Court Sexual Offence Case No. 2 of 2019).

J U D G M E N T

1. The Appellant appealed against sentence of 10 years imprisonment in Taveta Magistrates Court Sexual Offence Case No. 2 of 2019 which was passed by Hon. Khapoya PM on 20th September 2019 after the appellant was found guilty and convicted on even date offence of indecent act with a child contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006.
2. The appellant filed his petition with 5 grounds of appeal on 9th March 2020 but when he came to court on 7th June 2021 for hearing of his appeal he requested to have appeal on conviction to be withdrawn and he prayed that the court revises his sentence.
3. I think that was wise because looking at the records of the lower court the trial Magistrate found her guilty of the alternative instead of the principal charge for reasons the complainants hymen was not broken and yet there was overwhelming evidence there was partial penetration of the appellants genital organ unto the genital organ of the complainant and when he was found he was wiping blood that came from the child's genitalia due to him forcing himself on the 3 years old child.
4. The appellant conducted himself in a brutal manner against a vulnerable child of 3 years. I do therefore find that he deserved maximum available punishment. The sentence of ten years is the minimum. I uphold the sentence and dismiss both appeal and application for re-sentencing. Orders accordingly.

Right of Appeal 14 days.

Dated, signed and delivered at Mombasa in open court/online by MS TEAMS, this 15th day of July 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel - Court Assistant

Respondent - Ms. Karanja hold brief for Mr. Chirchir

Appellant - No appearance

Hon. Lady Justice A. Ong'injo J

15/07/2021