



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAMIRA**

**CRIMINAL APPEAL NO. 6 OF 2020**

**STEPHEN MARANGA ONKOBA.....APPELLANT**

**=VRS=**

**THE REPUBLIC.....--RESPONDENT**

***{Being an appeal against the Judgement of Hon. S. K. Arome (Mr.) – SRM Keroka dated and delivered on the 28<sup>th</sup> day of November 2019 in the original Keroka Principal Magistrate’s Court Sexual Offence No. 42 of 2018}***

**JUDGEMENT**

The appellant together with another who is not a party to this appeal were jointly charged with the offence of simple robbery contrary to Section 295 as read with Section 296 (1) of the Penal Code. The particulars of the charge were that on 25<sup>th</sup> October 2018 at [particulars withheld]-location in Masaba Sub-county within Kisii County they jointly with others who were not before the court robbed Priscah Nyanjera of Kshs. 49990/= and at or immediately before the time of the robbery used violence to the said Priscah Nyanchera.

The appellant was also charged separately with the offence of defilement contrary to Section 8 (1) as ready with Section 8 (3) of the Sexual Offences Act and in the alternative committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act. In the charge of defilement, it was alleged that on the same day and place as in the charge of robbery he unlawfully caused his penis to penetrate the vagina of DV a child aged fourteen years. In the alternative charge it was alleged that he intentionally and unlawfully touched the vagina of DV a child aged fourteen years with his penis.

The appellant pleaded not guilty to the offences and a trial ensued. The prosecution called eight witnesses and the appellant made an unsworn statement in which he maintained his innocence. After analyzing and evaluating the evidence by both sides the trial Magistrate came to the conclusion that the prosecution had proved the charge of robbery against the appellant and his co-accused beyond reasonable doubt, convicted them and subsequently sentenced each of them to imprisonment for a term of two years. The appellant was however acquitted on the other charges.

This appeal challenges the sentence in regard to the charge of robbery. The grounds of appeal are: -

- “1. That this appeal is for mitigation.**
- 2. The sentence meted against the appellant was very harsh and excessive in the circumstances.**
- 3. That I am a sole bread winner in my family and sole breadwinner my siblings depend on me for education and basic needs.**
- 4. That I am sick and depend on walking clutches which are not favourable in prison environment.**
- 5. That I urge this honourable court to consider my mitigation and review my sentence to reduce or acquit me.”**

The appeal was canvassed by way of written submissions but I note that the appellant merely reiterated the grounds in the petition. However, when he was given an opportunity to address the court he stated that a crucial witness was not called and that the probation officer who compiled a report regarding him did not visit his home.

The prosecution opposed the appeal and stated that the sentence was very lenient.

**Section 350 (2) of the Criminal Procedure Code** confines appeals only to the grounds in the petition of appeal except in the circumstances

set out in **Section 350 (2) (i)** or where leave to amend has been sought and granted in accordance with **Section 350 (2) (iv) of the Criminal Procedure Code**. In this appeal the petition of appeal was not amended and I shall therefore confine myself to the grounds in the petition and consider this to be an appeal against the sentence only.

The grounds of appeal seem to be a plea in mitigation. The appellant's contentions are that he is the sole bread winner of his family and that he walks on crutches which is not a favourable thing in prison.

It is trite that an appellate court should not interfere with the discretion by a trial court as to sentence except where it appears that in imposing the sentence the trial court acted on some wrong principle or it has imposed a sentence which is manifestly inadequate or manifestly excessive. In the case of **Wagude v Republic [1983] KLR 569** the Court of Appeal held that: -

***“The appellate court may interfere with the sentence only if it is shown it was manifestly excessive.....”***

The sentence prescribed for the offence of simple robbery contrary to Section 295 as read with Section 296 (1) of the Penal Code is imprisonment for fourteen years and in my view the term of two years meted against the appellant was not excessive and accordingly the appeal is not merited and it is dismissed.

**Signed, dated and delivered in Nyamira this 1<sup>st</sup> day of October 2020.**

**E. N. MAINA**

**JUDGE**

***Judgement delivered virtually via Microsoft Teams***