



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 21 OF 2017

JAMES MACHARIA NDEGWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Appeal from the original conviction in Criminal Case No. 170 of 2015 at the Principal

Magistrate's Court at Kangema by J. O. Magori, Principal Magistrate, on 4th April 2017]

JUDGMENT

1. The appellant was adjudged guilty of *rape* of a woman with *mental disability* contrary to section 7 of the **Sexual Offences Act**. He was sentenced to *10 years* imprisonment.
2. The offence was committed on 12th March 2015 at G. village [*particulars withheld*], Murang'a County. The particulars were that he caused his penis to penetrate the vagina of T.W. [*particulars withheld*], a woman suffering from mental disability.
3. This appeal only relates to the *sentence*. The original petition was filed on 18th April 2017. It challenged both his *conviction* and *sentence*. However, on 22nd May 2019, the appellant unequivocally *abandoned* the appeal on *conviction*.
4. The evidence of PW2 established that the victim was suffering from a *mental disability* since the year 1973. He caught the appellant red handed. The narrative was confirmed by PW3 and PW4. Medical evidence from PW1 corroborated the *rape*. I thus find that the conviction was *safe*.
5. The appellant pleaded for *leniency*. He said he is *remorseful* for his actions. In a synopsis, the entire appeal is a plea for *mercy*.
6. The appeal is contested by the Republic. The case for the State is that the appellant received the *minimum* sentence. I was implored to dismiss the appeal.
7. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
8. Section 354 (3) of **Criminal Procedure Code** empowers this court to *review* the sentence. In *Macharia v Republic* [2003] 2 E.A 559 the Court of Appeal held-

“The Court would not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors.”
9. The learned trial magistrate considered that the appellant was a *first offender*. The appellant in mitigation said: *“I have children who depend on me”*. I cannot say he applied wrong principles or overlooked some material factors.
10. Despite the fresh clamour for leniency, this was a serious felony. Section 7 of the **Sexual Offences Act** provides for a *minimum* sentence of *ten years*. That is the sentence that was handed down to the appellant.
11. The appeal is *dismissed*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 12th day of June 2019

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

Appellant.

Ms. R. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.