

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CRIMINAL APPEAL NO. 16 OF 2017

LAMECK OMENGE CHANGE.....APPELLANT

VERSUS

THE STATE.....RESPONDENT

{Being an appeal against the Conviction and Sentence of Hon. E. K. Nyutu – PM from the original Nyamira Principal Magistrate’s Court Criminal Case No. 299 of 2015}

JUDGEMENT

The appellant herein was sentenced to fifteen (15) years imprisonment for the offence of Rape contrary to Section 3 (1) (a) (b) as read with Section 3 (3) of the Sexual Offences Act. The particulars of the charge were that on 25th March 2015 at Bundo Sub-location in Nyamira County he intentionally and unlawfully caused his penis to penetrate the vagina of DN without her consent. Initially he pleaded not guilty to the charge but after five witnesses including the victim were heard he changed his plea to guilty. The first time the facts were explained to him he pleaded not guilty but when he next appeared before the court he admitted the facts and he was then convicted and sentenced to fifteen (15) years imprisonment. Being aggrieved he filed this appeal.

This morning Mr. Bwonwong’a, Advocate who recently came on record for the appellant informed this court that the appellant is not challenging his conviction but is only asking that the sentence be reduced. Mr. Bwonwong’a submitted that the person/victim is an adult and that the appellant is a young man who would be more resourceful were he to serve his sentence either on probation or community service. He contended that the appellant has already served three years out of the fifteen years to which he was sentenced. Mr. Bwonwong’a urged the court to allow the appeal.

The appeal was however opposed with Principal Prosecution Counsel Mr. Ochieng submitting that the sentence imposed was within the law. He submitted that rape, irrespective of the age of the victim, is a serious offence. He urged this court to dismiss the appeal and uphold the sentence.

I have considered the submissions by both sides. The appellant unequivocally pleaded guilty to the offence of rape and indeed he does not challenge the conviction. The offence of rape attracts a minimum of ten (10) years imprisonment. The sentence may however be enhanced to life imprisonment depending on the circumstances. In this case the trial court imposed fifteen (15) years imprisonment upon being informed that the appellant was a first offender and him pleading remorse and promising not to commit the offence again. Before he pleaded guilty the victim of the offence had given evidence and it is my finding that the circumstances of the offence warranted the enhancement of the sentence. It is also my finding that given that he was a first offender and that he was remorseful the sentence imposed was reasonable. It was also just given the circumstances of the offence. Rape is rape and it is a serious offence. The fact that the victim of this offence was an adult does not warrant or justify the offender to get away with a slap on his wrist. The sentence could have been enhanced to life imprisonment but he got only fifteen (15) years imprisonment. I see nothing on the record that would warrant me to interfere with the sentence. Accordingly, this appeal is dismissed and the sentence by the trial court is upheld.

Signed, dated and delivered at Nyamira this 10th day of July 2018.

E. N. MAINA

JUDGE