



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO.79 OF 2017

(Appeal Originating from Nyahururu CM's Court Cr.No.503 of 2015 by: Hon. A. Mukenga – R.M.)

SIMON KAGWI WANGUI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

Simon Kagwi Wangui was charged with the offence of Rape Contrary to Section 3(1)(a), (b) and (3) of the Sexual Offences Act. The particulars of the charge are that on the night of 14th and 15th February, 2015 in Nyandarua County, intentionally caused his penis to penetrate the vagina of VWW without her consent.

The appellant was arraigned in court on 17/2/2015 and he pleaded guilty to the charge, was convicted and sentenced to serve 15 years imprisonment.

The appellant preferred this appeal challenging both conviction and sentence.

However, at the hearing of the appeal, he abandoned the appeal on conviction. He told the court that he still admits the offence. He filed supplementary grounds of appeal on sentence in which he stated that he pleaded guilty to the charge and did not waste the court's time; that he is a first offender; that the court failed to call for and consider a presentence report; that he has benefitted from rehabilitation programs offered in prison; that he has acquired trades in carpentry and joinery which trades will assist him when he leaves prison. He prayed for reduction of sentence.

The appeal was vehemently opposed by Ms. Rugut learned counsel for the State who argued that the appellant was charged with rape and the sentence that he was liable to upon conviction is life imprisonment; that the accused was handed only 15 years which is lenient and is lawful.

I have considered the grounds of appeal. I looked at the court file and note that after the appellant was convicted; the prosecution said that he was a first offender. However, the appellant was never accorded an opportunity by the court to mitigate.

I have taken into account the fact that the appellant pleaded guilty and did not waste the court's precious time. He was treated as a first offender. I also take into account the fact that he has learnt different trades in prison which will assist him upon release from prison.

The offence for which he was charged carries a maximum sentence of life imprisonment upon conviction and minimum sentence of 10 years. For all the reasons given above, I am inclined to consider allowing the appeal and set aside the sentence of 15 years imprisonment. Instead, I will sentence the appellant to serve 10 years imprisonment which will start running from the date he was sentenced on 18/2/2015.

The appeal succeeds to that extent.

Dated, Signed and Delivered at NYAHURURU this 18th day of October, 2019.

R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut – State Counsel

Nyagah – Court assistant

Appellant - present