



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 52 OF 2017

STEPHEN ODUOR OWAKOAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(An appeal from the judgment, conviction and sentence passed on 18th May 2017 by Hon G. Adhiambo, SRM in Ukwala SRM Criminal Case No. 195 of 2017 S.O.A.)

RESENTENCING

1. On 2.10.2019 this Court delivered a judgment dismissing the Appellant's appeal against conviction and reserved the decision on sentence to await a social inquiry report and a Victim Impact Statement.
2. The Probation Officer, Siaya M/s Rhoda Wanyonyi on 7.11.2019 filed a Social Inquiry Report on the Appellant. The report reveals that the victim could not be traced.
3. The Appellant is a 25 year old single man. He was sentenced to serve 15 years imprisonment for the offence of defiling a child aged 16 years old. His appeal against conviction was dismissed. He has been in prison since 18.5.2017 and the trial Court record shows that he pleaded guilty to the charge although he tried to challenge the plea of guilty unsuccessfully as this Court found that the plea was unequivocal.
4. He is said to have found himself in the situation (offensive) when he was visiting his Aunt. He is the 5th born child in a family of six. His mother died. His father is an old retired teacher and is concerned about his son's health in prison. He prays for mercy for his son but wonders why his son was arrested.
5. The Appellant was assaulted following the incident and has since been sickly. However there is nothing from the social inquiry report to show remorse by the Appellant who pleaded guilty on 18.7.2017 and claimed that the Complainant was his girlfriend since the previous year.
6. The Appellant appears to feel justified for committing the offence because the victim was his girlfriend and he had had several sexual encounters with her. That attitude cannot be allowed in Law. If he is remorseful. It is him to say so not his relatives or aged father as they cannot carry his cross for him.
7. It is not indicated what is ailing the Appellant in prison. He is a young man whose life is likely to be destroyed in prison because of his own attitude. He does not appreciate the seriousness of the crime that he committed. He was given a chance to mitigate but he squandered the opportunity. He has himself to blame.
8. Nonetheless the Community appreciates that the crime that the Appellant committed is heinous. They cannot be said to approve of such an offence which traumatizes and in some instances leads the victim child becoming pregnant or even worse, contracting Venereal diseases or HIV/AIDS. That is the reason why the legislature enacted the Sexual Offences Act and put heavy penalties for offenders under the Act to deal with Sex pests. A 25 year old man has the capacity to seduce an adult woman and if she agrees to have sex with him, so be it but not to lure an underage school girl and claim she was his girlfriend.
9. The appellant was sentenced on 18.5.2017 and is due to complete his sentence on 18.5.2027 unless he gets remission from prison authorities subject to his good conduct, character or industry.
10. He was sentenced to serve 15 years imprisonment and he has completed two years and a half. He has saved the Court time and resources by pleading guilty to the charge albeit he unsuccessfully attempted to challenge it. He is 25 years old. The minor was aged 16 years. The offence is serious and traumatizing. However, as the appellant was handed mandatory minimum sentence, I exercise discretion pursuant to the decision in **C.A. Cr. A No. 93 of 2014 Jared Koita Injiri Vs. R (2019) eKLR** and set aside the 15 years imprisonment and substitute it with a prison term of 10 years inclusive of the years he has served in prison, to be calculated from 15.5.2017.

11. Orders accordingly.

Dated, signed and delivered at Siaya this 13th day of November, 2019.

R. E. ABURILI

JUDGE

In the presence of:

The appellant in person

Mr. Okachi Snr Principal Prosecution Counsel for the State

CA: Brenda and Modestar