



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**CRIMINAL APPEAL NO. 134 OF 2017**

**DAVID KANG'ETHE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

(Being an appeal from the judgement, conviction and sentence of Hon. H. Ng'ang'a, SRM,

dated 18<sup>th</sup> October 2017, in the Chief Magistrate's Court at Narok,

in Criminal Case No. 26 of 2017, Republic v David Kang'ethe)

**JUDGEMENT**

1. The appellant was convicted and sentenced to ten years' imprisonment in respect of the offence of rape (being count 1) and assault (being count 2) and was sentenced to ten years' imprisonment in count 1 and 2 years' imprisonment in count 2, which sentences were ordered to run concurrently.

2. He only has appealed against sentence. In his petition of appeal, the appellant has raised five grounds of appeal. He has faulted the trial court for imposing a manifestly excessive sentence in view of the fact that he was a first offender and now he is remorseful. Additionally, he has urged the court that he is a young man with a bright future, who supports his extended family. He now has developed high blood pressure while in prison and has therefore urged the court to impose a non-custodial sentence.

3. The trial court found that the rape was beastly. It took into account the mitigating factors, but never took into account the period he had been in custody, which is a mandatory requirement under section 333 (2) of the Criminal Procedure Code (Cap 75) laws of Kenya. The period he has been in custody is a mitigating factor.

4. After taking into account both the mitigating and aggravating factors, I hereby reduce the sentence to five years' imprisonment, which he now has to serve.

Judgement signed, dated and delivered in open court at Narok this 4<sup>th</sup> day of December, 2019 in the presence of the Appellant and Mr. Omwega for the Respondent.

**J. M. Bwonwong'a**

**Judge**

**4/12/2019**