

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 97 OF 2017

LEKETERIAN LENOLNGIRO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal from original Sentence dated 18/08/2017 in Nanyuki CM Criminal Case No 663 of 2016– W.J. Gichimu, PM)

J U D G M E N T

1. The Appellant herein, **LEKETERIAN LENOLNGIRO**, was convicted after trial of **attempted rape** contrary to **section 4** of the **Sexual Offences Act, 2006**. The conviction was entered under **sections 180** and **184** of the **Criminal Procedure Code, Cap 75** as the Appellant has been charged with **rape** contrary to **section 3(1) (c)** of the Sexual Offences Act. The particulars of the offence in the charge were that on 01/07/2015 in Laikipia County he caused his penis to penetrate the vagina of one **AL**, a person aged 23 years, without her consent.

2. On 18/08/2017 the Appellant was sentenced to serve five (5) years imprisonment. He has appealed only against that sentence. He complains that the sentence was excessive. The Respondent has opposed the appeal.

3. I have perused the trial court record. The Appellant was a first offender. He sought forgiveness in mitigation and pointed out that he took care of his children alone. The trial court took all that into consideration.

4. Under section 4 of the Sexual Offences Act any person who is convicted of attempted rape is liable to imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.

5. Any person who violates or attempts to violate a woman certainly deserves imprisonment. I do not consider imprisonment for five (5) years for attempted rape to be manifestly harsh or excessive in the circumstances of this case. The Appellant went to the complainant's home in the absence of her husband under the guise of borrowing a phone battery. He lingered there and ultimately made sexual advances which she rejected. He then made a very serious attempt to rape her. It was only the return of her son upon hearing his mother screaming that saved the complainant.

6. I find no merit in this appeal against sentence. It is hereby dismissed. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 4TH DAY OF DECEMBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 5TH DAY OF DECEMBER 2019