



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

GARSEN HCCRA No. 6 OF 2015

N T N.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an Appeal from the conviction and sentence of 30 years by Hon. NJAGI (RM) at Garsen on 7/11/2012)

JUDGEMENT

1. The Appellant pleaded guilty and was sentenced to 30 years imprisonment for the offence of incest contrary to section 20 (1) of the sexual offences Act No. 3 of 2006.

2. The particulars of the charge were that on diverse dates between January 2009 and November 2011 at [particulars withheld] area in Tana Delta District within Tana River County, the Appellant caused his penis to penetrate the vagina of xx a female person aged 16 years who was to knowledge his daughter.

3. The Appellant pleaded guilty to the charge. The facts as presented by the prosecution were that the Appellant had been defiling his daughter on various dates between January 2000 and November 2011 and he impregnated her twice. The complainant had two children. The matter was reported to FACT Director and the Appellant was arrested and charged with this offence. He pleaded guilty and was sentenced to 30 years imprisonment.

4. The prosecution served the Appellant with a notice to enhance the sentence. The Appellate has appealed against the sentence on the following grounds;

(i) THAT, the plea was unequivocal.

(ii) THAT, he was not informed of the consequences of the charges before he pleaded guilty.

(iii) THAT, section 198 of the Criminal Procedure code as read with articles 50(c) & (j) of the Constitution were not considered.

(iv) THAT, he was lured by the police to plead guilty with a promise that I shall be acquitted.

5. The Respondent opposed the Appeal on the grounds that the plea was unequivocal and they urged to courts to enhance the sentence to life imprisonment on the ground that the complainant was 16 years old.

6. I have considered the submissions by both parties in the appeal. My findings are as follows;

(i) That the Appellant pleaded guilty and therefore he does not have a right of appeal except on the ground that the sentence is excessive.

(ii) In the current case the prosecution did not produce an age assessment report or birth certificate of the complainant and *therefore* the sentence imposed of 30 years is lawful.

(iii) I find no reason to tamper with the conviction and sentence.

(iv) I accordingly dismiss the appeal and uphold both the conviction and sentence.

Delivered, Dated and Signed at Garsen this 1st day of March, 2018.

ASENATH ONGERI

JUDGE.