



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL APPEAL NO. 41 OF 2015

(CORAM: J.A. MAKAU – J.)

GEOFFREY ODOUR OYUGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against both the conviction and the sentence

dated 27.6.2011 in Criminal Case No. 256 of 2011 in

Siaya Law Court before Hon. W.K. Chepseba –PM)

JUDGMENT

1. The Appellant **GEOFFREY ODUOR OYUGI** and another were charged with an offence of gang rape contrary to **Section 10 of the Sexual Offences Act No. 3 of 2006**. The particulars of the charge are that on the **27th day of April, 2011** at Pap-Oriang Sub-Location in Siaya District within Nyanza Province, Intentionally and unlawfully caused their penis to penetrate the vagina of . EAO. The Appellant also faced an alternative charge of committing an indecent act with an adult contrary to **Section II (1) of the Sexual Offences Act No. 3 of 2006**. The particulars of the alternative count are that on the same day same place, the appellant with another intentionally touched the vagina of EAO with their penises against her will.

2. After the charge was read and explained to the Appellant in Dholuo language which he understands, the Appellant pleaded guilty. Subsequently, facts were given and exhibits produced as regards the treatment of the complainant, being P3 form, treatment of the Appellant, age assessment of the complainant and the Appellant's P3 form. The Appellant admitted the facts as true to which the Appellant was convicted. The Appellant mitigated and was sentenced to serve 20 years imprisonment. His co-accused was also sentenced to serve 20 years imprisonment.

3. Aggrieved by sentence, the Appellant filed petition of Appeal stating the following grounds of Appeal:-

a. That he is remorseful of the offence of the case he was convicted of.

b. That he had just began to establish his family having been newly married.

c. That he is the only son in his family who was left with his aging mother after the death of his father.

d. That he prays for the Honourable court to consider reducing his sentence to grant him non-custodial sentence.

4. At the hearing of the appeal the Appellant sought reduction of the sentence and urged he is not challenging the conviction. He urged he is an orphan and has a family which depends on him for support. M/S. Odumba, Learned State Counsel, urged the sentence provided for under **Section 10 of the Sexual Offences Act** is a minimum of 15 years and can be enhanced to life imprisonment. She further urged the sentence was lawful.

5. **Section 10 of the Sexual Offences Act** provides:

“10. Any person who commits the offence of rape or defilement under this Act in association with another or others, or any person who, with common intention, is in the company of another or others who commit the offence of rape or defilement is guilty of an offence termed gang rape and is liable upon conviction to imprisonment for a term of not less fifteen years but which may be enhanced to imprisonment for life.”

6. The facts of the case which were given and which the appellant admitted clearly indicated that on 27.4.2011 as from 4.00 p.m. the Appellant and his co-accused, started storking EAO from her neighbour’s home. They called her but failed to convince her and she left them. They then send a message through another lady and on her going to confirm whether it was her they wanted, the Appellant and his co-accused produced knives, held EAO, threatening her and dragged her to the nearby bush and in turns had sex with her severally and on being released she reported the matter to others.

7. In the instant case, I find the appellant and his co-accused had planned the commission of the offence. It was premeditated. They used threats and force to accomplish their mission of raping the complainant. The complainant was held hostage as she was being raped in turns and severally by the appellant and his co-accused. Their acts were beastly and dehumanizing on the complainant.

8. I find the court considered the facts of the case and in exercise of its discretion meted a sentence of 20 years. I find the sentence to be within the law and justified in view of how the offence was executed. I decline to interfere with the same. I find no reason why the sentence should be disturbed.

9. The upshot is that the conviction is upheld and sentence confirmed.

DATED AND SIGNED AT SIAYA THIS 16TH DAY OF FEBRUARY, 2017.

J. A. MAKAU

JUDGE

DELIVERED IN THE OPEN COURT THIS 16TH DAY OF FEBRUARY, 2017

IN THE PRESENCE OF:

Appellant in person

M/s Odumba for the State.

C.A. 1. GEORGE NGAYO

2. PATIENCE B. OCHIENG

2. SARAH OORO

J. A. MAKAU

JUDGE