



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 2 OF 2016
JULIUS MURAGE MURIUKI....APPELLANT
VERSUS
REPUBLIC..... RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. T. Matheka –Chief Magistrate dated 22nd Decembr 2015 in Nanyuki Chief Magistrate Court Criminal Case No. 590 of 2015)

JUDGMENT

1. **JULIUS MURAGE MURIUKI** was convicted, after trial before Nanyuki Chief Magistrate’s court, **of the offence of rape Contrary to Section 3(1) (a) (c) (b) (3) of the Sexual Offences Act** and was sentenced to 10 years imprisonment. He has now appealed against that sentence on the grounds that he has reformed and he is an orphan.

2. Mr Tanui Principal Prosecution Counsel opposed the appeal an sentence on the ground that the court should consider the circumstances under which the offence was committed.

3. The evidence adduced by the prosecution, leading to the conviction of the appellant, was that on the night 21st June, 2015 the appellant broke into the complainant’s home and raped her using threats to kill her. Throughout that very awful ordeal the appellant who was armed with a panga kept threatening to kill the complaint. This threat enable the appellant to rape the complainant who due to those threats became subdued. The trauma of reliving that evidence during the trial led the trial Magistrate to note in the proceedings as follows:

“The witness is really stressed by this case. Her lip dried up completely and her breathing. I would (sic) see how this had affected her.”

4. Just my going through trial court’s proceedings makes it very clear that the appellant not only committed the offence of rape but also so very much traumatised the complainant who was of mother and a wife. The courts have previously considered the principles that should guide a court in sentencing an offender. In the case **REPUBLIC - V- JAGANI & ANOTHER [2001] KLR** the court held:

“The purpose of a sentence is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence, to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing for reparation for harm done to victims in particular and to society in general. It is also seen as promoting a source of responsibility in offenders.

5. In another case R- V – Davey [1980] 2 A Crim R 254 the Australian Federal Court in discussing sentencing and its purpose held:

“... There has, of course, been much debate academic and judicial as to the purpose of punishment, the effectiveness or otherwise of deterrence, the necessity for punishment, the concept of retribution. One would again glean from some sources that there are two conflicting responsibilities vested in a sentencing Judge- one owed to the prisoner, to rehabilitate him, to treat him gently as it were- the other owed to society , to punish, to levy retribution, to deter... it is important that the law does not become confused in its objective. The purpose of the criminal law is to bring wrong doers to justice for the protection of the community.

6. In this court’s view there is no merit in the appellant’s appeal. The sentence of 10 years imprisonment indeed was commensurate to the offence. **The appeal against sentence is dismissed. The trial court’s sentence is confirmed.**

Dated and Delivered at Nanyuki this 7th June 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Julius Murage Muriuki

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE