



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 101 OF 2016

L L.....APPELLANT

versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. C. N. NDEGWA – PRINCIPAL MAGISTRATE dated 22nd March 2016 in Maralal Principal Magistrate’s Court Criminal Case No. 344 of 2016).

JUDGMENT

1. L L was convicted before the Principal Magistrate’s Court at Maralal of the **offence or rape contrary to section 3(i)(a)(c)(3) of the Sexual Offences Act of 2006**. The trial court sentenced him to 20 years imprisonment. He now appeals against that sentence.
2. The appellant has appealed against his sentence and seeks reduction of his sentence on the basis that he is an old man, 70 years old. That he is married with 6 children who depend on him. That he is now reformed and seeks a second chance.
3. The appeal against sentence was opposed by the learned counsel for the state Principal Prosecution Counsel Mr. Tanui. Mr. Tanui asked the court to consider the circumstances of the offence and to then find that the sentence was commensurate to the offence.
4. The facts narrated by the prosecution before the trial were that the appellant was charged with the offence of rape of his step daughter. It was stated that he forcibly raped his step daughter who was then 19 years old. The P3 form produced before court revealed that his step daughter was mentally challenged.
5. The appellant in seeking reduction of his sentence stated that he needs to be released in order to take care of his children. It is however one of those children he was charged of having raped. As a father he breached the trust a child would have towards a parent. He was supposed to be protector of his step daughter but he turned to be the attacker.
6. Sentencing is always at the discretion of the trial court: See the case of **PETER MBUGUA v REPUBLIC (2016) ECLR**. There are two cases I wish to refer to where the courts have considered the purpose for sentencing after conviction. In the case **REPUBLIC VS. JAGAN & ANOTHER (2001) KLR** 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 to society in general. It is also seen as promoting a source of responsibility in offenders.”

In the case **REPUBLIC V THOMAS PATRICK GILBERT CHOLMONDELEY (2009)eKLR** it was held:-

“Sentencing is central in the administration of criminal justice. It is the process stage in the criminal procedure at which court of law of competent jurisdiction makes an order, after convicting an offender as to the specific penalty to be meted out. The severity of a sentence depends on the circumstances of each case. Regard is usually had to the nature of the crime, the offender and the purpose of the sentence.”

7. With those cases in mind I am in agreement with the Principal Prosecution counsel’s submission that the sentence meted out to the appellant was commensurate to the offence of rape of a step daughter. **It is for that reason the appellant’s appeal against sentence is dismissed. The trial court’s sentence is confirmed.**

DATED AND DELIVERED THIS 7TH DAY OF JUNE 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Lesunya Lekirimpoto

For the State:

Language:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE