



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO.102 OF 2013

ERICK OCHIENGO KIDERO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the judgment of the Hon. Onyina Ag.Chief Magistrate) in Kibira Chief Magistrate's Criminal Case No.971 of 2011 delivered on 12/09/14)

JUDGMENT

Erick Ochiengo Asero, the appellant herein was charged with the offence of rape contrary to Section 3(1) (A) (3) of the Sexual Offences Act No.3 of 2006 in that on the 13th day of March 2011 at Olekasasi 'B' Location Ongata-Rongai township in Kajiado County intentionally and unlawfully caused his penis to penetrate the female genital organ (vagina) of DWN without her consent. Alternatively, he was charged with committing an indecent act with an adult contrary to Section 11(6) of the Sexual Offences Act No.3 Of 2006. It was alleged that on the same date and place he intentionally touched the vagina of DWN with his penis against her will.

He was found guilty of the offence of rape and was sentenced to serve ten years imprisonment.

In grounds of appeal filed on 2nd July, 2013 he appealed only against the sentence. He stated that he was the breadwinner of a family of two school-going children who since his imprisonment have dropped out of school, that he suffers from ulcers and he is remorseful.

On behalf of the respondent, learned State Counsel Mr. Mureithi noted that the penalty for rape accrues a minimum sentence of ten years which is what the trial court imposed and the same cannot be varied.

This court is alive to the fact that sentencing is in the discretion of the trial court but where minimum sentences are prescribed the trial court cannot vary the same. Under Section 3 (1) (a) as read with Section 3(3) of the Sexual Offences Act No.3 of 2006, **“aperson who commits the offence of rape is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.” (Emphasis mine)**

In the present case, the appellant was sentenced to serve ten years imprisonment which is the minimum sentence under the law. Although he submitted that he is remorseful and that he has a family to fend for

and is ready to reform, this court's fidelity is to the law and where a minimum penalty is prescribed by the law the court must impose that penalty. Undoubtedly, Section 3(3) is couched in mandatory terms and no sentence than the minimum ten years imprisonment can be imposed. In that regard this appeal fails and the same is dismissed.

DATED and **DELIVERED** in **NAIROBI** this 3rd day **JUNE** 2015.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:-

1. The appellant in person.
2. M/S Kirimi for the respondent