



IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL No. 173 OF 2009

GEOFREY MUNENE KIGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant **GEOFREY MUNENE KIGU** was convicted on his own plea of guilty to one count of Indecent Act with a Child contrary to Section 11(1) of the Sexual Offences Act. He was then sentenced to 20 years imprisonment.

2. The Appellant was aggrieved by the sentence and therefore filed this appeal. He cited four grounds of appeal namely:-

1. That in light of the fact that I am a first offender and that I am very remorseful and apologetic for the very act and being that I have only a young family with tender-aged children who need my company and help. I solicit most humbly for a non-custodian sentence from this venerable court.

2. That your lordship, accord me a pardon and subsequent liberty for the fact (supra).

3. That your lordship on the same facts breath exercises lessening of the sentence hereof; or

4. That your lordship do as deems fit is the countenance of this court.

3. In his submissions the Appellant urged the court to consider that he has young children and had no idea how they were living as his father died while he was in custody. He urged that he was excessively drunk and that was the reason he admitted the offence in the first place. The Appellant urged that he admits that he made a terrible mistake but urged court to consider he was a first offender.

4. The prosecution counsel for this appeal was Mr. Mulochi. Counsel opposed the appeal and urged that the sentence was proper as it served as deterrence to likeminded people. Learned counsel urged that the victim of the offence was the Appellant's niece.

5. The Appellant was convicted of an offence under Section 11(1) of the Sexual Offences Act. The facts of the offence were that the Appellant tricked his 12 year old niece, the complaint in this case to his house. When she did, he grabbed her and stripped her naked. She screamed for help

and neighbours came to her rescue.

6. I have considered the circumstances of the offence and it is clear that the Appellant attempted to defile the complainant. He should have been charged of attempted defilement. That notwithstanding the offence of Indecent Acts with a child charged is a complete minor offence to the charge of defilement. In any event the charge has same sentence as the attempted defilement charge.

7. A person convicted of an offence under section 11(1) of the Sexual Offences Act is liable to imprisonment for a period not less than 10 years imprisonment.

8. I have considered that the Appellant pleaded guilty to the charge. I have considered he was a first offender. He saved the court precious time for pleading guilty.

9. The learned trial magistrate took into account the Appellant's close relationship to the complainant and his abuse of that position. When he committed the offence she proceeded to impose 20 years imprisonment, a punishment which is double the number of years stipulated as the minimum sentence for the offence charged.

10. Having admitted the offence at the plea stage and being a first offender, the learned trial magistrate should have exercised her discretion not to give such a heavy sentence as the same does not demonstrate a judicious exercise of the court's discretion, nor an appreciation of the Appellant's plea of guilty, his past record and also proof of remorse by admitting his mistakes.

11. I have come to the conclusion that the Appellant's appeal against the sentence has merit. The court did not give due consideration to the mitigating factors in the case. The sentence was in all circumstances of the case harsh and therefore excessive. Accordingly I allow the appeal, set aside the sentence of 20 years and in substitution impose a sentence of 11 years imprisonment, from the date of sentence in the lower court.

12. The Appellants' appeal succeeds to the extent shown herein above.

DATED, SIGNED AND DELIVERED IN MERU THIS 10TH DAY OF JULY, 2014.

LESIIT, J.

JUDGE