

REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 189 of 2007

DIESEL NDUMA M'IGWETA.....APPELLANT

V E R S U S

REPUBLICRESPONDENT

J U D G M E N T

The Appellant Diesel Nduma M'Igweta was charged with one count of rape of section 140(1) of the Penal Code and an alternative count of indecent assault contrary to section 144(1) of the Penal Code. The Appellant was found guilty on his own plea of guilty. He was sentenced to 14 years imprisonment on 30th October, 2007.

Being aggrieved by the sentence the Appellant filed this appeal. The Petition of appeal on all grounds challenged the evidence adduced before the lower court. That was not factual since the Appellant had pleaded guilty to the charge and therefore the conviction was not based on evidence but on his plea of guilty to the facts of the case.

When the appeal came up for hearing the Appellant abandoned his appeal against the conviction and argued that against the sentence. He urged that he had been sentenced. He urged that he had been sentenced to 14 years imprisonment. He submitted that he was sick and had discovered he was HIV positive after sentence. He pleaded for mercy.

Mr. Mungai for the state did not oppose the appeal against sentence.

I have carefully considered the appeal. The Appellant was convicted of Rape contrary to S. 144(1) of the Penal Code. The facts of the prosecution as read together with the particulars of the charge are proof appellant had canal knowledge of the complainant against her will. The P3 form shows that even though the complainant was 52 years old and therefore a mature person, she had external injuries to the neck, face with blood stained cloths and internal injuries in the form of abrasions and lacerations on the vaginal wall. There was clearly no consent given and further the Appellant was rough in the manner in which he handled the complaint. The offence was in the circumstances aggravated.

A person convicted of this offence is liable to be imprisonment for life. The Appellant was sentenced to 14 years imprisonment. He has served 5 years so far.

Considering that a person convicted of the offence of Rape contrary to section 140 of the Penal Code is liable to imprisonment for life considering that Appellant injured the complainant during the execution of the offence charged, even though Appellant pleaded guilty to the offence thus saving courts time the offence was aggravated. The sentence was in the circumstances fair.

In the result the Appellant's appeal has no merit and is dismissed.

SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF MAY 2013.

J. LESIIT

JUDGE