



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 49 of 2011

REPUBLICRESPONDENT

VERSUS

ELIAS MUCHUI.....APPELLANT

(From original conviction and sentence in Criminal Case No.1185/10 SPM’s Nkubu)

J U D G M E N T

The appellant ELIAS MUCHUI was charged with an offence of rape Contrary to Section 3(1),(b), as read with Section 3(3) of the Sexual Offences Act No. 3 of 2006. The appellant pleaded guilty to the charge and admitted facts in support of the charge as correct and true.

The learned trial Magistrate sentenced the appellant to 10 years imprisonment. The appellant being aggrieved by the sentence preferred an appeal against sentence. The appellant grounds of appeal are set out in the petition of appeal as follows:-

- 1. *That he did not plead guilty to the charge .***
- 2. *That the sentence imposed on him was excessive and harsh***
- 3. *That the sentence be reduced***

During the hearing of the appeal the appellant abandoned the appeal on conviction and urged the court to reduce his sentence. He stated that he has two children and that his wife left them and that his parents are too old to care of them.

The learned State Counsel Mr. Jackson Motende opposed the appeal against the sentence and urged that the Section under which the appellant was convicted and sentenced provides for a mandatory minimum sentence of not less than ten(10) years. He urged the trial court sentenced the appellant to the minimum sentence of ten(10) years.

He urged the court to note the offence is serious and urged court to dismiss the appeal.

Section 3(1) ,(b) as read with Section 3(3) of the Sexual Offences Act provides as follows:

3. (1) *A person commits the offence termed rape if -*

(a) *He or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;*

(b) The other person does not consent to the penetration; or

(3) A person guilty of an offence under this section 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.

The above-mentioned Section provides for a mandatory minimum sentence of 10 years. The trial Magistrate acted within the provisions of law and provided the minimum sentence imposed by law. The sentence imposed upon the appellant was lawful and in accordance with the provisions of law. The court cannot impose any lesser sentence than the one imposed by the trial court.

In the circumstances as the sentence imposed was lawful and within the provisions of Section 3(3) of the Sexual Offences Act, the appeal against sentence is dismissed.

Right of Appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 2nd DAY OF MAY,2013.

J. A. MAKAU
JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:-

1. Appellant in person

2. Mr. Jackson Motende for the State

J. A. MAKAU
JUDGE