



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 122 of 2011

RICHARD MITHIKAAPPELLANT
VERSUS
REPUBLICRESPONDENT

(From original conviction and sentence in criminal case No.916 of 2008 of the Principal Magistrate’s Court at Maua)

J U D G M E N T

The appellant RICHARD MITHIKA was charged with an offence of defilement of a girl contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act with alternative count of indecent assault of a child contrary to section 11(1) of the Sexual Offences Act,2006. The appellant pleaded guilty to the main charge. That upon facts of the offence being given the appellant admitted that they were correct. The trial Magistrate after mitigation sentenced the appellant to twenty years imprisonment.

The appellant being aggrieved by the sentence preferred this appeal. The appellant is seeking his sentence to be reduced on the grounds set out in his petition of appeal being as follows:- That he is a male adult aged 31 years and still single and last born of a family of five(5). That he is an orphan as both his parents passed on. That following the death of his parents he dropped out of school at standard VII. That he pleaded guilty to the offence. The appellant did not in this appeal challenge the conviction but sentence which he averred was manifestly excessive.

Mr. J. Motende, learned State counsel opposed appellant’s appeal as the appellant was convicted on his own plea of guilty. He urged that under Section 8(2) of the Sexual Offences Act No.3 of 2006 the sentence provided for is life imprisonment. He urged that the trial Magistrate was very lenient to sentence the appellant to serve 20 years instead of life imprisonment. He argued the appellant had defiled a girl aged 9 years and urged the court to dismiss the appeal. Under Section 8(1) and (2) of the Sexual Offences Act it is provided:-

“8. (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

Section 8(2) of the Sexual Offences Act provides for a person who commits an offence of defilement with a child aged 11 years or less upon conviction to be sentenced to imprisonment for life. The word used under the said section is shall, which means the sentence to be imposed on conviction is life imprisonment. The appellant is lucky in that the trial court did not impose upon him life sentence and further the state did not apply for enhancement of the sentence.

In the result the sentence imposed upon the appellant is very lenient so the appeal against the sentence fails and 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