



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL CASE NO. 327 OF 2010

ABDIRAZAK MOHAMED DEROW.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No. 1175 of 2010 of the Senior Principal Magistrate's Court at Garissa by J.N. Onyiego – Principal Magistrate)

JUDGMENT

The appellant, **ABDIRAZAK MOHAMED DEROW**, was convicted for the offence of **Defilement contrary to section 8 (1) (3) of the Sexual Offences Act**. He was then sentenced to 20 years imprisonment.

In his Petition of Appeal, he has reiterated that he did plead guilty to the charge. However, he nonetheless stated that he was challenging both his conviction and the sentence.

The appellant contended that there was no medical examination which was conducted on him. However, he explains that he was HIV positive.

Presumably, in order to address his said medical condition, the appellant swallowed a lot of diazepam tablets. Consequently, he was unable to control his feelings. That is what he says.

Even though he pleaded guilty, the appellant submitted that the sentence of 20 years imprisonment was too harsh. Therefore, because of his medical condition, he requested this court to reduce the sentence. A perusal of the record of the proceedings before the trial court reveals that the appellant admitted the facts which were spelt out by the prosecution. Those facts included the following;

- (1) The complainant, who was 13 years old, was herding goats, when the appellant emerged from a bush. The appellant was armed with an axe.**
- (2) The appellant ran after the goats, trying to get hold of them. When the complainant resisted the attempts of the**

appellant, the latter threw the axe at the complainant, hitting him. The complainant fell down.

(3) The appellant pulled the complainant behind the bush. He then inserted his penis into the anus of the complainant.

(4) The appellant was arrested on the following day. The police had been given the description of the appellant, by the complainant.

In the medical report presented to the trial court, the doctor who examined the complainant established that the external anal orifice of the complainant had spermatozal trace, and it had lacerations. He also ascertained that the external anal sphincter was relaxed.

The doctor confirmed that the complainant was a victim of sodomy.

To my mind, the facts which were admitted by the appellant were sufficient to sustain the conviction for the offence of defilement. And as the appellant admitted the said facts, the same are deemed as having been proved by the prosecution. The prosecution did not need to bring any witnesses to further prove the charge.

The conviction is thus upheld.

As regards the sentence, section 8(3) of the Sexual Offences Act stipulates that;

“A person who commits an offence of defilement with a child between the age of twelve to fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

Therefore, as the complainant was 13 years old, the learned trial magistrate was obliged to sentence the appellant to imprisonment for not less than 20 years imprisonment. In the event, this court has no discretion on the request by the appellant, to reduce the imprisonment. The sentence was the minimum prescribed by law.

Accordingly, there is no merit in the appeal. It is dismissed in its entirety. I uphold both conviction and sentence.

Dated, Signed and Delivered at Nairobi, this 2nd day of March, 2011

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FRED A. OCHIENG

JUDGE