

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 264 OF 1986

MUSYOKA.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted by the District Magistrate of indecent assault contrary to section 144 (1) of the Penal Code and was sentenced to 12 months imprisonment together with 4 strokes of corporal punishment. There was ample corroborative evidence that the complainant who had gone to graze cattle was assaulted with sexual intent by the appellant, during which time the complainant screamed. Her dress and knicker was torn and two ladies who heard the screams came to her rescue. There was no substance in the appellant's defence that the complainant had consented to the sex act.

The appellant was properly convicted. In sentencing the appellant to 12 months' imprisonment with four strokes, (a reasonable and fair sentence) the magistrate remarked that he was doing so "to ensure 100% deterrence". It is frivolous to make such remarks knowing that whatever the sentence 100% deterrence". It is frivolous to make such remarks knowing that whatever the sentence 100% deterrence cannot be ensured. Despite vigorous and severe sentences meted out to sexual offenders masculine aggressive preponderance will continue to be attracted towards sexually desirable female passivity, sometimes by unlawful force and many a time by seduction.

However, that is not to say that adequate punishment depending on each circumstances, may not be meted out to the sexual offenders. The point I wish to make is that it is out of place to say that 100% deterrence will be ensured by meting out a particular sentence especially so by a person exercising judicial authority whose balanced, unbiased and fair judgment is expected to earn confidence and respect of all those who will be affected by such judgment.

There being no merit whatsoever in this appeal, the same is dismissed in entirety.

May 13, 1987

ABDULLAH

JUDGE