



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(Coram: Kneller, J A, Chesoni and Nyarangi, Ag JJ A)

CRIMINAL APPEAL NO 52 OF 1984

BETWEEN

WARUINGI GIKUMA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from an order of the High Court of Kenya at Nakuru (Masime J) dated 23rd February 1984 IN High Court Criminal Appeal No 322 of 1983)

JUDGMENT OF THE COURT

The appellant, now aged 71 years, pleaded guilty to a charge of defilement of a girl contrary to Section 145(1) of the Penal Code. He was sentenced to 7 years' imprisonment plus 7 strokes. The complainant was then aged 51/52 years. His appeal to the High Court (Masime J) was summarily dismissed. The appeal is only against sentence.

The initial ground of appeal is that, the sentence is harsh and manifestly excessive and should be substituted by a probation order. The appellant's additional hand-written grounds are that the evidence on the complainant's injuries was contradictory, that there was no evidence of sexual intercourse and that the doctor's evidence was not considered. Learned principal state counsel argued that there is no right of appeal. This second appeal can only be brought on grounds of law.

The additional grounds do not raise any issue of law because the summary dismissal under section 352(2) of the Criminal Procedure Code is correct. The sentence is a legal one. The appellant, notwithstanding his age, committed an offence which causes horror and revulsion.

He richly deserved the severest possible punishment provided by law.

The appeal is dismissed. That is the order of the court.

Dated at Nakuru this 25th day of September 1984.

A A KNELLER

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JUDGE OF APPEAL

Z R CHESONI

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AG JUDGE OF APPEAL

J O NYARANGI

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AG JUDGE OF APPEAL

I certify that this is a true copy of the original

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DEPUTY REGISTRAR