IN THE COURT OF APPEAL

AT KISUMU

(CORAM: ONYANGO OTIENO, AZANGALALA & KANTAI, JJ.A)

CRIMINAL APPEAL NO. 294 OF 2012

BETWEEN

SIKO ANYONA ….....APPELLANT

AND

REPUBLIC ….....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Kisii (Musinga, J)

dated 23rd March, 2010

in

H.C. CR.A. NO. 138 OF 2009)

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JUDGMENT OF THE COURT

On 6th June, 2009, at about 10.00 pm., ABS, a girl aged 10 years was sleeping inside a house. Her mother heard her screaming and moved out carrying with her a torch. On checking, she found the appellant Siko Anyona lying on top of ABS, defiling her. On the appellant realising that ABS's mother had found him in the act, he hurriedly got off ABS and started to walk away. ABS's mother screamed for help and neighbours responded immediately, apprehended the appellant and escorted him to E Police Station. ABS was examined and treated and was thereafter issued with a P3 form which was duly filled. The appellant was charged with the offence of Defilement Contrary to **Section 8 (1)** as read with **Section 8 (2)** of the **Sexual Offences Act - Act NO. 3 of 2006**.

In the alternative he was charged with the offence of Indecent Act with a child Contrary to **Section 11 (1)** of the **Sexual Offences Act - Act No. 3 of 2006**. The particulars of the main charge read as follows:-

> ***"On the 6th day of June, 2009, at[particulars withheld] in Gucha South District within Nyanza Province, intentionally and unlawfully had an act of penetration with your genital organ to a child namely ABS aged 10 years old (sic)."***

He was taken to court on 9th June, 2009, and on the charge being read and explained to him in Ekegusii language, the appellant pleaded guilty to the charge and that plea was entered by the court. Facts were not ready on that day. On 10th June, 2009, the facts as stated above herein were read out to the appellant

and he admitted the facts. He was thereafter convicted of the offence on his own plea. In mitigation, he prayed for leniency and said he would not repeat the offence again. The learned Senior Resident Magistrate (R.M. Nafula) sentenced him to serve life imprisonment which was in law the prescribed sentence. The alternative charge of Indecent Act with a child was naturally not pursued.

The appellant felt dissatisfied with that conviction and sentence. He appealed to the High Court claiming that the trial Magistrate erred in law and facts in finding that the case against him was proved beyond any reasonable doubt and that the learned Magistrate failed to find that the case against him was not properly investigated.

Of cause these two grounds were plainly irrelevant as he had been convicted on his own plea. He also pleaded that the sentence was overly harsh and excessive.

The learned Judge, after considering the appeal, found that the plea was unequivocal and that the sentence was the only one provided for by law and so dismissed the appeal both on conviction and sentence.

That is what has prompted this appeal before us premised on four grounds of appeal prepared and filed by the appellant in person. These are, in summary that he had pleaded guilty as a result of mistreatment by the complainant and police which was both physical and psychological; that the plea was hurriedly taken without giving him time to prepare for his defence; that the trial court relied on a P3 form not produced in court by a medical practitioner and that the court convicted him without proper evidence that would have established the offence as required in law.

Before us the appellant said in his submissions in person, that the whole saga was the consequence of family feuds and that he was threatened and that was why he pleaded guilty to the charge. Mr. Mongare, the learned State counsel, opposed the appeal submitting that the appellant pleaded guilty on his own volition and was rightly convicted of the offence. As to sentence, Mr. Mongare was of the view that the court could not interfere with that as it was the prescribed sentence.

In our view, this appeal lacks merit and indeed the appellant should not have gone to the High Court on appeal against conviction and even against sentence. We say so, because under **Section 348** of the Criminal Procedure Code:-

> ***"No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence."***

In this case, the plea was clearly unequivocal and if one says that pursuant to pronounciation of the court in the case of **Adan vs Republic (1973) EA 445** the words ***"it is true"*** were not enough, there were the facts that were read to him one day after he had pleaded, the which facts he also accepted freely. The plea was thus beyond doubt unequivocal and the sentence awarded was as prescribed by the law. **Section 8 (2)** of the Sexual Offences Act is clear and we can do no more than repeat what the learned Judge stated in his judgment that the offence attracts imprisonment for life and no discretion is given to the trial court on that.

Before us, the appellant says he was threatened by the complainant and the police. If that were so, he had all the time before trial court to complain. He also had a second time to make those allegations before the first Appellate Court. He did not do so. In short, nothing of the sort took place and his allegations before us are, in our view, an afterthought. In any case, they are matters of fact upon which we would have no jurisdiction to decide.

The appellant is the author of his problems and we have no reasons whatsoever to interfere with the decision of both the trial court and the first appellate court. They will stand.

The appeal stands dismissed.

Dated and delivered at Kisumu this 21st day of June, 2013.

J.W. ONYANGO OTIENO

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JUDGE OF APPEAL

F. AZANGALALA

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is the true copy of the original

DEPUTY REGISTRAR