IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 376 OF 2007

KIMBO LIGALE IBRAHIM ……..…… APPELLANT

AND

REPUBLIC ……..…….. RESPONDENT

(An appeal from the judgment of the High Court of Kenya at Kitale (Ochieng, J) dated 4th December, 2007

in

H. C. CR. A NO. 92 OF 2005)

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JUDGMENT OF THE COURT

This is a second appeal. The appellant, **Kimbo Ligale Ibrahim**, was charged and convicted of the offence of defilement of a girl contrary to section 145 (1) of the Penal Code and sentenced to 23 years imprisonment with hard labour by the Senior Principal Magistrate's Court at Kitale on 17th August, 2005. He appealed against both conviction and sentence to the superior court (Ochieng, J) who dismissed the appeal against both conviction and sentence.

Aggrieved by that decision, the appellant, who is unrepresented, appealed to this court citing eleven home-made grounds. However, when he appeared before us, he withdrew his appeal against conviction, and confined his appeal against sentence only. He urged this court to reduce his sentence to five years, arguing that the sentence of 23 years imprisonment was too harsh. Ordinarily that would be an issue outside the jurisdiction of this Court since severity of sentence is a question of fact by dint of section 361 (1) (a) of the Criminal Procedure Code. But the issue has caused us some anxiety and concern because it is not clear to us that the principles of sentencing that obtained when the offence was committed were applied in sentencing the appellant to 23 years imprisonment. We have noted the trend in at least four other cases from this area where we have had to reduce the sentences (see for example ***Fred Michael Bwayo vs Republic – Criminal Appeal No. 130 of 2007*** and ***Lazaro Kundu Simiyu vs Republic – Criminal Appeal No. 8 of 2007 (ur)***.

In ***Fred Michael Bwayo vs Republic – Criminal Appeal No. 130 of 2007 (unreported)*** this Court discussed at some length a similar issue and came to the conclusion that the principles of sentencing were erroneously applied, and reduced the sentence. In this case the sentence meted out on the appellant has no sound legal basis. We must therefore interfere with it as the lawfulness of it is called to question. In

***Amolo vs Republic* (1991) KLR 392** at p. 397 this Court stated:-

"***As a matter of law we have, as learned principal state counsel submitted, jurisdiction to restore a sentence which has been altered on wrong principles which, we are satisfied, occurred in this case. To do so does not, we think, infringe the principles set out in section 361 (1 (a) of the Criminal Procedure Code, which otherwise takes away our powers to reduce a sentence which is manifestly too severe."***

In view of the foregoing, we think, it is within our mandate to set aside the sentence of 23 years imposed on the appellant. We do this for parity of reasoning with the two cases cited before, namely ***Fred Michael Bwayo vs Republic*** and ***Lazaro Kundu Simiyu vs Republic* (supra)**.

Accordingly, we set aside the sentence of 23 years imprisonment and substitute therefor a sentence of **fifteen (15) years imprisonment with hard labour** from the date of conviction by the trial court that is to say 17th August, 2005. To that extent only shall we interfere. The appeal is, otherwise, dismissed.

Dated and delivered at Eldoret this 29th day of May, 2009.

E. O. O'KUBASU

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JUDGE OF APPEAL

P. N. WAKI

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JUDGE OF APPEAL

ALNASHIR VISRAM

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR