

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: KWACH, SHAH & KEIWUA, J.J.A.)

CRIMINAL APPEAL NO. 64 OF 2000

BETWEEN

CHANGAWA KATANA KATENGA APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a judgment of the High Court of Kenya at
Mombasa (Waki, J.) dated 24th March, 1999**

in

H.C.CR.A. NO. 333 OF 1998)

JUDGMENT OF THE COURT

The appellant was convicted on his own plea of guilty for the rape of a 70-year old woman and sentenced to 15 years imprisonment. His appeal to the High Court was summarily rejected under section 352 of the Criminal Procedure Code. Although the learned Judge had a discretion in the matter, in denying the appellant an opportunity to appeal against sentence, which on the face of it appears harsh, we think he did not exercise his discretion judicially. It was a wrong exercise of judicial discretion.

We allow this appeal and in the exercise of our power under section 3(2) of the Appellate Jurisdiction Act (Cap 9) allow appeal against sentence which we reduce to 5 years from the date of conviction.

Dated and delivered at Mombasa this 18th day of January, 2001.

R. O. KWACH

JUDGE OF APPEAL

A. B. SHAH

JUDGE OF APPEAL

M. KEIWUA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR