



REPUBLIC OF KENYA



**Lokarana v Republic (Criminal Appeal 29 of 2020)
[2024] KEHC 2859 (KLR) (18 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL 29 OF 2020
AC MRIMA, J
MARCH 18, 2024**

BETWEEN

PETER EROT LOKARANA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising out of the conviction and sentence of Hon. M.I.G Moranga (SPM) in Kitale Chief Magistrate's Court Criminal Case (S.O.) No. 293 of 2019 delivered on 14th May 2020)

JUDGMENT

Background:

1. Peter Erot Lokarana, the Appellant herein, was charged with the offence of Rape Contrary to Section 3(1)(a)(b)(3) of the [Sexual Offences Act](#) No. 3 of 2006.
2. The particulars of the charge were that on the 10th October 2019 at (Particulars withheld) farm in Trans-Nzoia East Sub County within Trans-Nzoia County, intentionally and unlawfully caused his penis to penetrate the vagina of S.C.W. without her consent.
3. The Appellant faced an alternative charge of committing an indecent act with an adult contrary to Section 11 of the [Sexual Offences Act](#) No. 3 of 2006.
4. Before the trial Court, the Appellant initially denied both the main and the alternative charge.
5. The Complainant, S.C.W. then testified as PW1. At the close of her testimony, she identified the Appellant herein. The complainant's husband also testified as PW2.
6. Further hearing was scheduled for 10th March 2020. On the said date, while the Respondent herein was in the course of adducing evidence, the Appellant changed plea. Accordingly, an own plea of guilty was entered. Facts were presented which included inter alia the evidence of PW1 and PW2.



7. The Appellant admitted the facts and was convicted on his own plea of guilty.
8. The Court thereafter considered the Pre-Sentencing report and victim impact assessment and sentenced the Appellant to 20 years in prison.

The Appeal

9. Through an undated Petition of Appeal, the Appellant urged his case on the following grounds;
 1. That I implore the Court to agree that I am a first offender and I am remorseful and sorry for what happened.
 2. That I will be a law-abiding citizen and be careful with the laws of the government if my prayers of the High Court.
 3. That my siblings depended on me and they are now living a desperate life full of frustration and further I am HIV positive.
 4. That I urge the High Court to consider a lenient sentence to assist in the reformation and rehabilitation.
10. The Appellant filed undated written submissions. It was his case that having committed the offence, he prayed for mercy and leniency to enable him go back to the community and restructure his life.
11. He stated that he was profoundly apologetic and in deep regret for having taken part in the commission of the offence. It was his case that the period he had spent in custody has given him an opportunity to transform. He stated that he had changed his ways and will be a law-abiding citizen.
12. He urged the Court to take into consideration that he is 61 years of age, a first offender and the family's only bread winner. It further was his case that he was HIV positive. He urged the Court to allow the appeal to accord him an opportunity to reform and rehabilitate.

The Respondent's case:

13. The Prosecution challenged the Appeal through written submission dated 20th June 2023. It was its case that the trial Court properly considered the Appellant's mitigation, the victim impact sentiments, the probation report as well as the decision in Petition No. 15 of 2015 Francis Karioko Muruatetu & Another -vs- Republic.
14. It was its case that the sentence was sound and ought not be interfered with. They urged the Court to uphold both the conviction and sentence.

Analysis:

15. This being a first appeal, it's the duty of this Court to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent conclusions and findings (See Okono vs. Republic [1972] EA 74). In doing so, this Court is required to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial Court and, therefore, it ought to give due regard in that respect as so held in Ajode v. Republic [2004] KLR 81.



16. The appeal is on the sentence. Section 348 of the Criminal Procedure Code provides as follows;

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.

17. The circumstances under which an Appellate Court would interfere with the trial Court's sentence was discussed by the Court in Criminal Appeal 365 of 2011, John Muendo Musau -vs- Republic [2013] eKLR where it was observed as follows: -

On the sentence, section 26(2) of the Penal Code provides that where the prescribed sentence is imprisonment for life or any other period, the trial court has the discretion to pass a sentence of imprisonment for a shorter period. Situations where an appellate court would interfere with the discretion of a trial court on the issue of sentence have in the past been clearly defined by this Court. An appellate court would interfere only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. Those circumstances were well illustrated in the case of Nelson vs Republic [1970] E.A. 599, following Ogalo Son of Owuora vs Republic (1954) 21 EACA 270 as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershecity (1912) C.CA 28 T.LR 364.

18. Before handing down the sentence, the trial Court considered the Pre-sentence report, the Appellant's mitigation and the circumstances under which the Appellant committed the offence.

19. Through the Appellant's own admission, it came out that he knew he was HIV positive when he committed the offence. It, therefore, follows that he willingly and forcefully exposed the Complainant to the virus. That is an aggravating circumstance.

20. The Black's Law Dictionary 11th Edition Bryan A. Garner Thomson Reuters, defines 'Aggravating circumstance' at page 306 as follows: -

A fact or a situation that increases the degree of liability or culpability for a criminal act.

A fact or situation that relates to a criminal offence or defendant and that is considered by a court in imposing punishment.

21. The impact of the exposure to the virus on the Complainant was captured in the Probation Report. It was the Complainant's sentiments that the offence has had a lasting negative impact on her, her family and husband. It was her case that she has suffered shame and that the Appellant had not shown any remorse on what he did.

22. Further, it was her position that due to exposure to HIV, which she managed to prevent after taking Post Exposure Prophylaxis (PREP), her relationship with her husband had been affected due to mistrust.



23. The Probation report further indicated that the Area Chief knew the Appellant as not being a good man. He stated that he had received several adverse sexual reports against him, most of which did not get to Court as they are settled out of Court. The Area chief recommended a deterrent sentence.
24. The Trial Court, upon considering the totality of the foregoing preferred a deterrent sentence of 20 years in prison.
25. It is this Court's considered position that the grounds of appeal do not surmount in anyway whatsoever the circumstances under which the offence was committed. Given the aggravating circumstance and the Appellant's knowledge thereof and having considered the principles enunciated in the case of Ogalo Son of Owuora vs Republic (1954) 21 EACA 270, this Court finds no fault in the sentencing and this Court will not interfere with it.
26. In the premises, the appeal is without merit. Accordingly, the conviction and sentence are upheld.
27. The Appeal is dismissed.
28. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 18TH DAY OF MARCH, 2024.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Peter Erot Lokarana, the Appellant in person.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Chemosop/Duke – Court Assistants.

