

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL APPEAL NO. 114 OF 2010**

BEATRICE NJERI KARANI .....APPELLANT

VERSUS

REPUBLIC .....PROSECUTOR

**From original conviction and sentence in Criminal Case No.303 OF 2008 at Resident Magistrate's Court at Karaba by Hon. E.K. NYUTU – SRM on 22/7/2010**

**J U D G M E N T**

**BEATRICE NJERI KARANI** the Appellant herein was charged with the offence of false allegation contrary to section 38 of the Sexual Offences Act No.3 of 2006.

The particulars as stated in the charge sheet were as follows;

**BEATRICE NJERI KARANI:** On the 5<sup>th</sup> day of August 2008 in Mbeere District of the Eastern Province made false allegations against GMM to the effect that the said GMM had committed a sexual offence namely attempted rape.

The matter proceeded to full hearing and the Appellant was convicted and sentenced to seven (7) years imprisonment. She was aggrieved by the Judgment and has filed this appeal citing the following grounds;

- 1. That the learned trial Magistrate failed in law and fact by rejecting the Appellant's mitigation.**
- 2. That the trial Magistrate failed in law and fact by failing to consider that the Appellant was bitter and her clothes were torn and she was taken to the hospital for treatment.**
- 3. That the learned trial Magistrate imposed a harsh, excessive, manifestly and unproportional sentence.**
- 4. That the learned trial Magistrate erred in law and facts in failing to consider that the Appellant was the bread winner and her husband was sick admitted at Kenyatta Hospital and no one to take care of her six (6) years old child.**
- 5. The appellant stayed in police cells for nine (9) days, so her**

### ***Constitutional rights were violated.***

The Brief facts of this case are that the Appellant and PW1 come from the same village. The Appellant's husband had at one time borrowed money from PW1's wife who is PW2. The said man did not honour his pledge to pay and PW2 and her husband took the matter to the administration where the man undertook to pay. He however failed to pay. On 2/8/2008 PW1 and PW2 decided to go to the Appellant's home to see her husband over the said debt. PW2 knocked the door and the Appellant emerged. She was asked if her husband was in but she threatened to start screaming. She told them her husband was away and she asked them to leave before she could scream. The Appellant then started screaming. PW1 and PW2 then left as the Appellant hurled insults at them. People gathered having been attracted by the screams. PW1 and PW2 returned to their home. In the meantime the Appellant went to Karaba police post on 5/8/2008 and reported to PW3 and PW4 that PW1 and PW2 had gone to her house demanding for money (shs.4600/=) owed to them by her husband. And that PW1 assaulted her, took her shs.15000/= and attempted to rape her. She also brought to them a torn pant, torn petticoat and skirt (EXB1 – 3) as exhibits. The matter was investigated and PW3 and PW4 came to the conclusion that the Appellant had lied to them. And that the clothes (EXB 1-3) had been artificially cut to support her falsehoods. She was then charged with giving false information.

In her unsworn defence she said she was attacked by PW1 in her house. He beat her and her clothes got torn. This was on 2/8/2008. She reported to the village elder then to the police. She was treated at Gateji dispensary and a P3 form filled.

When this appeal came for hearing, the Appellant indicated that she was abandoning her appeal against conviction. She asked the Court to consider releasing her as She had reformed.

M/s Ing'ahizu for the State supported the conviction and sentence saying they were lawful. She did not however oppose her application for release after considering the circumstances of the case, she said.

As a 1<sup>st</sup> appeal Court this Court is enjoined to re-evaluate and reconsider all the evidence before it and arrive at its own conclusion. It also has to bear in mind that it did not see nor hear the witnesses. I am guided by the cases of;

- 1. OKENO –V- REPUBLIC [1972] E.A. 32**
- 2. NGUI –V- REPUBLIC [1984] KLR 729**

I have considered the submissions by the Appellant and those of the learned State Counsel. I have equally evaluated all the evidence before me. There is no dispute that indeed PW1 and PW2 went to the appellant's house on 2/8/2008. The purpose for the visit was to see the Appellant's husband who owed PW2 money. It was about 7 p.m. and there was nothing wrong in PW1 escorting his wife.

It is also clear from the evidence that the Appellant created an uncalled for scene by screaming when PW1 and PW2 asked her about her husband. Infact PW1 and PW2 are lucky they were not lynched by the people who answered to the screams.

It also came out through the evidence that infact the Appellant was not assaulted and there was never any attempt to rape her. Even in her evidence she does not allude to any such attempt or even the theft of money from her. The police officers (PW3 & PW4) properly investigated her claims and found her to have lied through and through. Her defence was just an afterthought.

The learned trial magistrate well analyzed the evidence and arrived at the correct finding. And I have no reason of interfering with the conviction. For this offence she was sentenced to 7 years imprisonment. Section 38 of the Sexual Offences Act under which she was charged provides that the punishment is equal to that for the offence complained of.

The offence complained of was attempted rape. Section 4 of the Sexual Offences Act provides for a sentence of not less than 5 years imprisonment which may be enhanced to imprisonment for life. The Appellant was given 7 years imprisonment which was a lawful sentence.

In her appeal she concentrated on the sentence which she says is harsh and she asks for leniency so that she can be released to go home. From the lower Court record the Appellant had been released on a personal bond of Shs.50,000/= with no surety on 25/8/2008. She faithfully came to Court until the date of conviction on 22/7/2010 without absenting herself even when she was sick. I must congratulate her for that.

She has been in prison now for 3 years. Had she been given the minimum sentence of 5 years, she would be about through with the sentence considering re-mission. I however believe she has learnt her hard lesson. It never pays to bear false witness against others.

I uphold the conviction. I set aside the sentence of seven years imprisonment and substitute it with a sentence of the period already served. The Appellant to be released unless otherwise lawfully held under a separate warrant.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 10<sup>TH</sup> DAY OF JULY 2013.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of;**

**M/s Ing'ahizu for State**

**Appellant**

**Njue – C/c**



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