



IN THE COURT OF APPEAL

AT NYERI

(CORAM: O'KUBASU, NYAMU & RAWAL, JJ.A.)

CRIMINAL APPEAL NO. 100 OF 2011

BETWEEN

P.K.K.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nyeri (Makhandia, J.) dated 12th November, 2009)

in

H.C.CR.A. NO. 154 OF 2008

JUDGMENT OF THE COURT

In the trial Court, Senior Principal Magistrate's Court at Nanyuki, the appellant, **P.K.K** was after a full trial

found guilty of the offence of incest contrary to **section 20(1)** of the Sexual Offences Act No.3 of 2006 and sentenced to 18 years imprisonment. The substance of the charge was that the appellant had sexually abused his nine year old daughter.

Aggrieved by the verdict, the appellant filed a petition of appeal in the High Court on *18th July, 2008*. However, on *12th November, 2009*, the appellant withdrew the petition of appeal against both conviction and sentence.

Thereafter, the appellant who acted in person filed a memorandum of appeal in this Court challenging the sentence imposed on him notwithstanding the fact that he had already withdrawn the appeal filed in the High Court as indicated above.

In his submissions, the appellant submitted that he had, while in prison, reformed after undertaking a very useful carpentry course and that his character had changed in a positive way. On her part, Miss Maundu, for the State, submitted that in law the appellant did not have a valid appeal before the Court following the withdrawal of the appeal in the High Court.

We have reflected on the matter fully and at the outset we are inclined to agree with Miss Maundu's submissions.

Although Miss Maundu did not submit that her objection was based on lack of jurisdiction on our part, we consider that there is indeed a serious jurisdictional issue. Thus the provisions of **section 361 1(b)** of the Criminal Procedure Code, **section 3(1)** of the Appellate Jurisdiction Act and **Article 164(3)** of the Constitution clearly deny us the jurisdiction to entertain the matter.

For clarity, the respective provisions are set out hereunder:-

Section 361(1) as material states:-

..... the Court of Appeal shall not hear an appeal under this section

(a)

(b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.

Section 3(1) of the Appellate Jurisdiction Act reads:-

“The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court in cases in which an appeal lies to the Court of Appeal under any law”

Article 164(1)(3) provides:-

“The Court of Appeal has jurisdiction to hear appeals from (a) the High Court...”

In the circumstances, we do not have any appeal from the High Court.

In the result, the appeal is dismissed.

It is so ordered.

Dated and delivered at Nyeri this 19th day of April, 2012.

E.O. O'KUBASU

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JUDGE OF APPEAL

J.G. NYAMU

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JUDGE OF APPEAL

K.H. RAWAL

.....

JUDGE OF APPEAL

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

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