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| Case Number: | Criminal Appeal 23 of 2006 |
| Date Delivered: | 07 Nov 2006 |
| Case Class: | Criminal |
| Court: | High Court at Kisii |
| Case Action: | Judgment |
| Judge: | Kaburu Bauni |
| Citation: | DICKSON MWITA MANGITI v REPUBLIC [2006] eKLR |
| Advocates: | Mr. Chirchir for the respondent App. P.I.P |
| Case Summary: | Criminal practice and procedure-appeal-appeal against conviction and sentence-where the appellant was charged and convicted on the offence of unnatural offence-whether the sentence was excessive in the circumstances of the case-where the appellant was a first offender-whether the appeal had merit-Penal Code section 162 (b) |
| Court Division: | - |
| History Magistrates: | - |
| County: | - |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | - |
| History County: | - |
| Representation By Advocates: | - |
| Advocates For: | - |
| Advocates Against: | - |
| Sum Awarded: | - |

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Criminal Appeal 23 of 2006

DICKSON MWITA MANGITI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the Resident Magistrate's Court at Kehancha in Criminal Case No.376 of 2004 – M. K. K. SEREM, RM)

JUDGMENT

Appellant is charged with the offence of unnatural offence contrary to S.162 (b) Penal Code in that on 29th June 2004 at Kegonga Sub Location in Kuria District he had carnal knowledge of a she goat against the Order of nature.

I have considered the appeal and re-evaluated the evidence. I find that the appellant was properly convicted. PW2 SAMUEL MARWA candidly told court how he found the appellant carnally abusing the she goat. He had tied it and had removed his trousers. PW2 had been attracted to the scene by noises from the goat. PW4 SOPHIA MOKAMI had also heard the noises from the goat which was tied in her piece of land. He found appellant there.

BENJAMIN EMUKULE (PW5) a Veterinary Officer examined the goat and concluded that it was carnally abused.

The evidence was therefore overwhelming and accused's defence did not dislodge it. He was properly convicted.

As to the sentence appellant was sentenced to 14 years imprisonment.

That is the maximum sentence provided for. Appellant was a first offender and pleaded for leniency. He said he was mad and sterile though there was no proof of this. The trial magistrate thought that appellant was worse than a beast. Still I feel that he should not have been awarded the maximum sentence, more so being a first offender though the offence is serious.

I will allow the appeal on sentence.

I therefore reject the appeal against conviction. I however set aside the sentence of 14 years imprisonment and substitute it with a sentence of three (3) years imprisonment from the date of conviction.

Dated 7th November 2006.

KABURU BAUNI

JUDGE

Delivered in presence of:

cc. Mobisa

Mr. Chirchir for state.

App. P.I.P



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