Case Number:	Criminal Appeal Case 193 of 1986
Date Delivered:	10 Nov 1987
Case Class:	Criminal
Court:	High Court at Machakos
Case Action:	Judgment
Judge:	Edward Nii Adjar Torgbor
Citation:	Mulwa v Republic[1987] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Criminal
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL CASE NO 193 OF 1986

MULWA…….....……PLAINTIFF

VERSUS

REPUBLIC……DEFENDANT

JUDGMENT

November 10, 1987 **Torgbor J** delivered the following Judgment.

The two appellants appeal against their conviction and sentence for attempted rape and for which they were sentenced to 4 years imprisonment plus 6 strokes of the cane each.

Underground 1 of the appeal it is alleged that the facts admitted by the appellants did not disclose the offence charged. In my view this allegation is not borne out by the record. There is attempted rape if a man attempts to have an unlawful carnal knowledge with a woman without her consent. These facts indicate that the 1st appellant dragged the complainant into a bush and was found lying on top of the legs and that she screamed. The second appellants appeared with a panga and tried to stifle her scream. I am satisfied therefore that rape was attempted on the facts admitted by the appellants.

The record does not indicate the language used by the appellant when the plea was recorded and no interpreter was disclosed. Was any prejudice caused to the appellants" Not so in my view. On July 4, 1986 when the charge was first read to the appellants they denied it and it was as recorded. If so they must have understood it. On July 11, 1986 when the charge was again read and explained they admitted it. They also admitted the facts read in support of the charge and in their mitigation said the complainant was a girl friend. What they said in mitigation of sentence showed that they understood the proceedings. I am satisfied therefore that no prejudice resulted by the omission to indicate the language used or name the interpreter. The conviction there upheld

The sentence were however severe in all the circumstances of this case. The appellants attempted to rape the complainant but did not succeed due to the timely arrival of other persons. They pleaded guilty to the charge and were first offenders. They also seem to know the complainant and referred to her as a girlfriend. No injury was inflicted on the complainant though she must have been bodily shaken by the experience. Again it seems to me that the role played by the first appellant (1st accused) was greater than that played by the 2nd appellant (2nd accused). The 1st appellant started the attempt of rape and was joined later by the 2nd appellant and it was the 1st appellant who was actually found lying between the complainant’s legs. It seems to me that the sentences should reflect the different and lesser role played by the second appellant.

Consequently the sentences of the lower court are set aside and substituted as follows:

1. The first appellant shall serve a term of imprisonment for 20 months with six strokes of the cane.

2. The second appellant shall serve a term of imprisonment for 16 months with six strokes of the cane.

Order accordingly.

November 10, 1987

TORGBOR

JUDGE