

OFFENCES AGAINST LIBERTY

- These are covered under sections 254 to 266 of the Penal Code
- They include
 - i) Kidnapping
 - ii) Abduction
 - iii) Wrongful confinement
 - iv) Slavery related offences
 - v) Unlawful compulsory labour

1. KIDNAPPING

- Section 254, Penal Code:

“Any person who *conveys any person beyond the limits of Kenya without the consent* of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Kenya.”

- Key elements of kidnapping beyond Kenya:
 - a) Conveying a person
 - b) Beyond the limits of Kenya
 - c) Without consent
- Section 255, Penal Code: Kidnapping from lawful guardianship:

“Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of a lawful guardian of the minor or person of unsound mind, without the consent of the guardian, is said to kidnap the minor or person from lawful guardianship.”

- Section 257, Penal Code: Punishment for kidnapping:

“Any person who kidnaps any person from Kenya or from lawful guardianship is guilty of a felony and is liable to imprisonment for seven years.”

2. ABDUCTION

- Section 256, Penal Code

“Any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.”

- Kidnapping and abduction for purposes of murder: imprisonment for 10 years (section 258, Penal Code)
- Kidnapping and abduction for purposes of wrongful confinement: imprisonment for 7 years (section 259, Penal Code)

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- Kidnapping and abduction in order to subject a person to grievous harm, slavery or unnatural lust: imprisonment for 10 years (section 260)
- Kidnapping or abducting a minor under 14 years with intention to steal from them: imprisonment for 7 years (section 262, Penal Code)
- Concealing knowledge of kidnapped or abducted persons: Section 261, Penal Code:

“Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person is guilty of a felony and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.”

WRONGFUL CONFINEMENT

- Distinction to be made between wrongful restraint and wrongful confinement.
- Obstruction of a person in one direction amounts to wrongful restraint;
- Restraining a person from proceeding beyond “certain circumscribing limits” amount to wrongful confinement
- *Bird v Jones (1845) 115 ER 668*, which was an action for false imprisonment, the plaintiff having been compelled to proceed in a particular direction, although not restrained from proceeding in any direction.
- *Gregory Muli Musau & Michael Muisa Musau*, HC Nairobi, Criminal Appeals No.550 and 549 of 1979.

At about 7.30 pm on 27th March 1979, Nzembei Mulee was on duty with his employer at the latter’s hotel in Machakos, when first the appellant, an administration policeman, accompanied by the second appellant, a local businessman, entered and without more ado proceeded to handcuff Nzembei with black handcuffs and to take him out of the hotel and away towards the river and *shambas* where they assaulted him and demanded for money.

The Court held that “Even though the boundaries were movable, Nzembei could not run away from the appellants in any direction because of the total restraint they were exercising upon him.”

- Punishment for wrongful confinement: section 263, Penal Code:

“Whoever wrongfully confines any person is guilty of a misdemeanour and is liable to imprisonment for one year or to a fine of fourteen thousand shillings.”

SLAVERY RELATED OFFENCES

- Buying and disposing of a person as a slave, section 264, Penal Code:

“Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, is guilty of a felony and is liable to imprisonment for seven years.”

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- Habitual dealing in slaves, section 265, Penal Code:

“Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony and is liable to imprisonment for ten years.”

UNLAWFUL COMPULSORY LABOUR

- Section 266, Penal Code:

“Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.”



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