



**Lokitoi v Republic (Criminal Appeal 94 of 2018)  
[2022] KEHC 3090 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 3090 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL APPEAL 94 OF 2018  
HPG WAWERU, J  
JUNE 30, 2022**

**BETWEEN**

**SAMMY EROGO LOKITOI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from original Sentence in Nanyuki CM  
Sexual Offence Case No 16 of 2018 – N Thuku, PM)*

**JUDGMENT**

1. The Appellant herein, Sammy Erogo Lokitoi, was convicted after trial of attempted defilement contrary to section 9(1) & (2) of the *Sexual Offences Act*, 2006. It was alleged that on 23/02/2018 in Laikipia Central Sub-County of Laikipia County, he attempted to cause his penis to penetrate the vagina of one VNE, a child aged 11 years. On 09/10/2018 he was sentenced to 10 years imprisonment. He appealed against both conviction and sentence; however, he informed this court on two occasions that he wished to pursue only the appeal against sentence.
2. I have considered the submissions of both the Appellant and the learned counsel for the Respondent. The Appellant stated only that he was seeking forgiveness and leniency, and that he was now aged 38 years and married with children.
3. Learned counsel submitted that the sentence meted out was lawful and the mandatory minimum provided by law, and further, that it was well deserved given the circumstances of the case. He further submitted that at his sentencing the Appellant did not express any remorse.



4. Section 9(2) of the Act states –

“A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.”

That means that once the trial court decides that the offender deserves a custodial sentence, it must be a term of imprisonment of not less than ten years. However, this interference with the court’s sentencing discretion by the legislature is no longer tenable following the Supreme Court of Kenya’s declaration that section 204 of the *Penal Code* that provided for mandatory death sentence for the offence of murder contrary to section 203 of the same Code was unconstitutional in the now notorious Muruatetu Case.

5. In the present case the Appellant truly deserved a custodial sentence, given the circumstances of the case. I have not heard him argue that he did not deserve a custodial sentence. What he is in fact seeking is a reduction of that sentence to a shorter term. I find no reason at all to interfere with that sentence in any way, given the circumstances of this case.

6. I find no merit in this appeal against sentence. The same is hereby dismissed. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 8TH DAY OF JUNE 2022**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 30TH DAY OF JUNE 2022**

