



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL APPEAL NO 39 OF 2019**

**SAMUEL SOKIO YEGON.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Being an appeal from the original sentence of Hon. S.O.Temu, PM, dated 7<sup>th</sup> May 2018 in Criminal Case No S.O. 2 of 2018 in the Principal Magistrate's Court at Kabarnet, Republic v Samuel Sokio Yegon)***

**JUDGMENT**

1. In his petition to this court, the appellant has appealed against his sentence of five years' imprisonment in respect of the offence of attempted rape contrary to section 4 of the Sexual Offence Act No 3 of 2006.
2. The appellant has raised the following grounds. He is a first offender. He is remorseful. He has reformed. He now is a saved Christian and devoted to his religion. He has a blind old mother, who depended upon him and he is the sole bread winner of his family.
3. The appellant has in the alternative applied for a non-custodial sentence or a reduction of sentence.
4. In his submissions, the appellant has in substance pleaded for lenience and has replicated the same matters that he has raised in his petition of appeal; which I find unnecessary to consider.
5. In sentencing the appellant, the trial court took into account the nature of the offence and then proceeded to sentence him to the prescribed minimum of five years' imprisonment.
6. I have re-evaluated the sentence imposed in the light of the applicable law as a first appeal court. As a result, I find that I am entitled to interfere with the sentencing discretion of the trial court; for it erred in law in holding that it was bound to impose the prescribed minimum sentence of five years' imprisonment.
7. Furthermore, I find that the appellant has been in custody for over two and half years'; which period I am bound to take into account as required by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
8. The victim suffered bruises in the forehead, a loose tooth, bruises in the upper limbs, bruises in both knees and bruises in the hip.
9. After considering both the mitigating and aggravating factors, I find that the sentence the appellant has served has met the ends of justice.
10. In the premises, the appellant has succeeded in his appeal with the result that the appellant is hereby ordered released unless held on other lawful warrants.

**Judgment dated, signed and delivered in open court at Kabarnet this 26<sup>th</sup> day of February 2021.**

**J M BWONWONG'A**

**JUDGE**

**In the presence of:**

**Mr. Sitienei Court Assistant.**

**Appellant present in person.**

**Mr. Abwajo for the Respondent.**