



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

MISCELLANEOUS CRIMINAL APPLICATION NO. E060 OF 2021

JOSEPH NJOGU NJUNGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Joseph Njogu Njunge, the Applicant herein was charged in the main count with the offence of attempted defilement contrary to **Section 9(1)** as read with **Section 9(2)** of the **Sexual Offences Act No. 3 of 2006**. It was alleged that on the 12th November, 2020 at Kinangop within Nyandarua County, intentionally attempted to cause his genital organ namely penis to penetrate the genital organ namely vagina of RNN, a girl aged 14years.

2. In the alternative, he was charged with indecent act with a child contrary to **Section 11(1)** of the **Sexual Offences Act No. 3 of 2006** in that he intentionally touched the buttocks of RNN a child aged 14 years.

3. The Applicant pleaded guilty to the main charge, was convicted accordingly and sentenced to serve 10 years imprisonment.

4. The Applicant did not prefer an appeal. Instead, he filed the instant application vide a Chamber Summons filed on 8th March, 2021 in which he sought revision of the sentence and urged that he be put on Community Service Orders for the remainder of the period of his sentence or any relief that the court deems fit to impose.

5. In what he dubbed as a Memorandum of Sentence Review the Applicant has offered mitigation stating that he is a first offender, he is remorseful of his offence and has learnt to be a law abiding citizen, he is from a poor family background, he did not give proper mitigation during sentencing, he is the sole breadwinner of his family and his incarceration has placed them in a very difficult situation, he is not appealing against the sentence and conviction but applying for a review of sentence and that he pleaded guilty to the charges.

6. At the hearing of the application, he submitted that his sentence be reduced. He also submitted that he had not seen his family in a long time.

7. Learned prosecutor, Ms. Maingi opposed the application. She submitted that the Applicant was sentenced under **Section 9 (2)** of the **Sexual Offences Act** which provides for a minimum mandatory sentence of ten (10) years and since the sentence was legal it was urged that the court should not set it aside. Ms. Maingi thus submitted that the Applicant was not entitled to review.

8. In response, the Applicant submitted that he had reformed while in prison.

Determination

9. Section 9(2) of the Sexual Offences Act provides that *“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.”*

10. There is no doubt that the complainant, at the time of the offence was aged 14 years. The Applicant does not deny having committed the offence as he only seeks a review of the sentence. The provision under which he was charged is couched in mandatory terms and provides for a minimum mandatory sentence of 10 years and which is what the learned trial magistrate imposed. In that case, the court cannot vary the sentence as the same was legal.

11. In sum, the application lacks merit and the same is hereby dismissed.

12. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 16TH DAY OF DECEMBER, 2021

G. W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person
2. Miss Maingi for the Respondent