

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CORAM: D.S. MAJANJA J.

CRIMINAL APPEAL NO. 29 OF 2015

BETWEEN

DALMAS CHEMONGES NDIWA.....APPELLANT

AND

REPUBLIC..... RESPONDENT

(Being an appeal against the original conviction and sentence of Hon. M. Njagi, SRM dated 18th February 2015 at the Magistrates Court at Eldoret in Criminal Case No. 1635 of 2013)

JUDGMENT

1. The appellant, **DALMAS CHEMONGES NDIWA**, was convicted of the offence of committing an indecent act contrary to **section 11(1)** of the *Sexual Offences Act* ("the *Act*"). The particulars of the offence were that on 4th May, 2013 at Kaptagat Location in Keiyo South District within Elgeyo Marakwet County, he unlawfully allowed his penis to come into contact with the vagina of HJK, a girl aged 12 years.
2. The appellant relied on his amended grounds of mitigation in which he contested the sentence of 10 years' imprisonment imposed on him. He stated that he has now been rehabilitated and should now be released.
3. Under **section 11(1)** of the *Act*, the mandatory minimum sentence for the offence of committing an indecent act is 10 years. The court does not have any discretion to interfere with the sentence.
4. Since the appellant was given the statutory minimum. I dismiss the appeal and affirm the sentence save that the sentence of 10 years' imprisonment shall run from 6th May 2013.

DATED and DELIVERED at ELDORET this 23rd day of APRIL 2019.

D.S. MAJANJA

JUDGE

Appellant in person.

Ms Mokuu, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.