



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.130 OF 2017**

**(Appeal Originating from Nyahururu CM’s Court SOA.11 of 2015 by: Hon. V. Ochanda– R.M.)**

**PAUL KAMAU MWANGI.....APPELLANT**

**- V E R S U S -**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The appellant, **Paul Kamau Mwangi** was charged with the offence of defilement contrary to section 8(1) as read with Section 8(2) of the Sexual Offences Act.

The particulars of the charge are that on 6/9/2015 at 5.30 p.m. at Subukia Trading Centre in Nyandarua County, intentionally and unlawfully caused his penis to penetrate the vagina of **M.W.M.**, a child aged 5 years.

In the alternative the appellant faced a charge of committing an indecent act with a child, contrary to section 11(1) of the Sexual Offences Act in that on 6/9/2015 at Subukia Trading Centre, unlawfully and pressed the vagina of **M.W.M.** a child aged 5 years.

The court convicted the appellant for the offence of attempted defilement contrary to section 9(1) of Sexual Offences Act as read with Section 9(2) Sexual Offences Act and Section 179(1) of Criminal Procedure Code and he was sentenced to 15 years imprisonment. Being dissatisfied with both the conviction and sentence, the appellant preferred this appeal the firm of Nderitu and Company Advocates filing the petition of Appeal dated 16/11/2016. The appellant later filed supplementary grounds on 4/12/2017 and argued the appeal by himself.

At the hearing of the appeal, the appellant abandoned the appeal on conviction and pursued his appeal on sentence based on the supplementary grounds in which he prays for reduction of the sentence of 15 years imprisonment, because he was a first offender, the sole breadwinner of his family; that he has been of good conduct while in prison and has acquired grade test three in tailoring.

**Mr. Mutembei**, learned State Counsel did not oppose the appeal but left it to the discretion of the court.

The appellant was sentenced to serve 15 years imprisonment whereas the minimum sentence upon conviction under Section 9(2) of Sexual Offences Act is 10 years imprisonment.

I have considered the evidence that led to the conviction. In my view, the appellant is lucky to have gotten off lightly with the offence of attempted defilement. This is because the facts clearly disclosed an offence of defilement. The facts revealed that there was penetration of the complainant and penetration is defined in Section 2 of the Sexual Offences Act as partial or complete insertion of the genital organs of a person into the genital organs of another person.

The complainant’s genitalia were injured meaning that there was partial penetration. The trial court misdirected itself when it found the appellant guilty of attempted defilement.

Taking into account the circumstances of the offence, the appellant’s mitigation which the court took into account before handing him the sentence, I find that the sentence was lenient enough and find no good reason to interfere with the discretion of the court.

I find the appeal on sentence to be lacking in merit and is hereby dismissed.

**Dated, Signed and Delivered at NYAHURURU this 28<sup>th</sup> day of February, 2018.**

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**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Mutembei - Prosecution Counsel

Soi - Court Assistant

Appellant – present in person